



BILLET D'ÉTAT

WEDNESDAY, 25th SEPTEMBER, 2019

VOLUME 1

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XVIII
2019

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BILLET D'ÉTAT

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **25th September, 2019** at **9.30 a.m.**, to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

11th September, 2019

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

**THE ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) LAW, 1986 – THE APPOINTMENT
OF A PANEL CHAIR AND MEMBERS OF THE COMPLAINTS PANEL**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “*The Administrative Decisions (Review) Guernsey Law, 1986 – The Appointment of a Panel Chair and Members of The Complaints Panel*”, dated 13th August 2019, they are of the opinion:-

- 1) To appoint Advocate Michael John Adkins as a member and as the Panel Chair of the Complaints Panel;
- 2) To appoint Mr. John Paul Bate as a member of the Complaints Panel;
- 3) To appoint Mrs. Jennifer Lesley Benjamin as a member of the Complaints Panel;
- 4) To appoint Mrs. Audrey Mary Branch as a member of the Complaints Panel;
- 5) To appoint Mr. Roy David Burke as a member of the Complaints Panel;
- 6) To appoint Mr. Ian Charles Carter as a member of the Complaints Panel;
- 7) To appoint Ms. Shelaine Kay Green as a member of the Complaints Panel;
- 8) To appoint Mr. David Gwyn Harry as a member of the Complaints Panel;
- 9) To appoint Mr. Nigel Boyd Kelly as a member of the Complaints Panel; and
- 10) To appoint Advocate Julia Anne Springlett as a member of the Complaints Panel.

The above Propositions have 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.

POLICY & RESOURCES COMMITTEE

THE ADMINISTRATIVE DECISIONS (REVIEW) GUERNSEY LAW, 1986 – THE APPOINTMENT OF A PANEL CHAIR AND MEMBERS TO THE COMPLAINTS PANEL

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port
Guernsey

13th August, 2019

Dear Sir

1. Executive Summary

- 1.1 Recent changes to The Administrative Decisions (Review) (Guernsey) Law, 1986 require the appointment of members to serve on a new Complaints Panel. Persons are also required to form a standing panel of Independent Members who may be appointed to sit on Review Boards.
- 1.2 The Purpose of this Policy Letter is to ask the States of Deliberation to appoint:
- a) Advocate Michael John Adkins as a member and the Panel Chair of the Complaints' Panel ("the Panel") in accordance with section 1A(1) and (3) of the Administrative Decisions (Review) (Guernsey) Law, 1986, as amended ("the Law"); and
 - b) Mr. John Paul Bate, Mrs. Jennifer Lesley Benjamin, Mrs. Audrey Mary Branch, Mr. Roy David Burke, Mr. Ian Charles Carter, Ms. Shelaine Kay Green, Mr. David Gwyn Harry, Mr. Nigel Boyd Kelly and Advocate Julia Anne Springlett White, as members of the Complaints Panel, in accordance with section 1A(1) of the Law.

2. Background

- 2.1 In March 2016¹, the States of Deliberation approved several amendments to the Law which is now in force², making the review board process more independent

¹ Article 13 of Billet d'État VI of 2016

² The Administrative Decisions (Review) (Guernsey) (Amendment) Law, 2017 which was registered and came into force on 3rd June 2019 gives effect to the March 2016 States' Resolutions referred to above.

and fit for purpose. For the purposes of this Policy Letter, this included the amendment of sections 1, 2, 3 and 6 of the Law, which replaces the roles of the Chief Executive and H.M. Greffier with that of a new independent body to be known as “the Complaints Panel”, led by a Chair to be appointed by the States.

- 2.2 The Policy & Resources Committee is the sponsoring Committee for the Law and its functions and is responsible for proposing candidates to serve as members of the Complaints Panel, for election by the States of Deliberation.
- 2.3 Section 4 of the Law also introduces a fourth independent person who is not a States Member nor a Dean of the Douzaine to sit on each review board convened by the Chairman of the Panel of Members. The Chairman of the Panel of Members is tasked under the Law with appointing an independent Member to each the Review Board convened to hear and administrative review. A standing panel of independent Members has been recruited and formed for that purpose.
- 2.4 A jointly advertised recruitment for members of both the Complaints Panel and the standing panel of Independent Members was undertaken between the Policy & Resources Committee, as the sponsoring Committee, and the Chairman of the Panel of Members during June and July 2019. Most of the applicants applied to be appointed to the Complaints Panel and to be part of the standing panel of Independent Members, given the similar skills and experience required for both roles.
- 2.5 For ease of reference, a diagram showing how the new panels fit into the Administrative Review Board process may be found in Appendix 2.

3. The Complaints Panel

- 3.1 Section 1A(1) to (5) of the Law sets out the composition of, and appointment process to, the Complaints Panel:
 - "(1) The States shall, upon recommendation of the Policy & Resources Committee, appoint a panel to be called the Complaints Panel which shall consist of such number of persons as in the opinion of the States is necessary for the purpose of carrying out the functions of the Complaints Panel established under this Law.
 - (2) The members of the Complaints Panel shall be persons who, in the opinion of the States, have sufficient experience and knowledge to enable them to decide matters likely to fall for decision by the Complaints Panel.
 - (3) The States shall from time to time appoint a Panel Chair from amongst the members of the Complaints Panel.

(4) The Panel Chair may appoint a Deputy Panel Chair from amongst the members of the Complaints Panel who may perform the functions of the Panel Chair.

(5) The following may not be members of the Complaints Panel –

(a) a Member of the States of Deliberation,

(b) a member of a Committee who is not also a Member of the States of Deliberation,

(c) a Dean for the time being of a Douzaine of one of the Parishes of the Island of Guernsey,

(d) any person who holds appointment to any judicial office in the Bailiwick, or

(e) an employee of the States."

3.2 Under sub section 1A(7), all Panel members, including the Panel Chair, may serve the Panel until they resign by giving notice in writing to the Policy & Resources Committee.

4. The Appointments Process for Complaints Panel and standing panel of Independent Members

4.1 In June 2019, the Policy & Resources Committee and the Chairman of the Panel of Members jointly advertised for expressions of interest from residents in Guernsey and Alderney interested in being appointed to both the Complaints Panel and the Panel of Independent Members of the Administrative Review Board.

4.2 The advertisement attracted a number of expressions of interest and the applications were assessed against the key criteria for all of the roles. Most of the applicants applied to be part of both panels given the similar skills and experience required for both roles.

4.3 The shortlisted candidates were interviewed by the President of the Policy & Resources Committee, the Chairman of the Panel of Members, the Chief Executive for the States of Guernsey and the Principal Officer to the Complaints Panel and Review Board.

4.4 The Committee wishes to thank all of the applicants for their interest in these roles.

5. Recommendations for Appointment to serve on the Complaints Panel

- 5.1 The Policy & Resources Committee is satisfied that all of the persons listed in paragraph 5.4 below have the requisite skills and experience and are fit and able to carry out the functions of the Complaints Panel as established under the Law.
- 5.2 The interview panel was impressed with the calibre of and the broad range of experience of all of the candidates, especially as demonstrated during their interviews. All of the candidates showed a very good understanding of the roles and the skills that would be required of them to ably carry out their functions under the Law, including the ethics required to deliver unbiased and fair decisions. They all also demonstrated the important skills required to work together as a team.
- 5.3 The proposed composition of the panels is not only representative of our community of pan-Bailiwick customers but also represents a good balance and diversity in experience, skills, gender and backgrounds; all of which facilitate and enrich good team-work and decision-making. To have attracted the three very experienced and able candidates from Alderney is of particular importance, given the various services that Alderney residents receive from the States of Guernsey. The Review Board system enables citizens of Alderney to also challenge the decisions/actions of Committees (or officers acting under delegated authority of Committees) against which they are aggrieved after exhausting a Committee's complaints processes.
- 5.4 The Policy & Resources Committee proposes Advocate Michael John Adkins, Mr. John Paul Bate, Mrs. Jennifer Lesley Benjamin, Mrs. Audrey Mary Branch, Mr. Roy David Burke, Mr. Ian Charles Carter, Ms. Shelaine Kay Green, Mr. David Gwyn Harry, Mr. Nigel Boyd Kelly, and Advocate Julia Springlett White be appointed as members of the Complaints Panel, in accordance with Section 1A(1) of the Law.
- 5.5 The Policy and Resources Committee is of the opinion that all of the proposed candidates in paragraph 5.4 meet the requirements of Section 1A(2) of the law and they *"have sufficient experience and knowledge to enable them to decide matters likely to fall for decision by the Complaints Panel"* .
- 5.6 The Policy and Resources Committee confirms that the candidates listed in paragraph 5.4 meet the eligibility requirements of Section 1A(5) of the Law.
- 5.7 A short summary of the curriculum vitae of each of the proposed appointees is set out in Appendix 1 to this Policy Letter.
- 5.8 The Policy & Resources Committee believes that several of the applicants have the skills and experience to more than competently chair or act as Deputy Panel Chair. However, the Policy & Resources Committee considers Advocate Michael

John Adkins to be best able, given his experience in public law matters, to fulfil this role and therefore recommends that the States of Deliberation elect him as Panel Chair.

6. Panel of Independent Members

6.1 The Law requires the Chairman of the Panel of Members to appoint an independent Member who is not a States Member nor a Dean of the Douzaine to sit on each Review Board convened after referral from the Complaints Panel. The Chairman has selected the following persons to serve on a standing panel of Independent Members:

- Advocate Michael John Adkins
- Mr. John Paul Bate
- Mrs. Jennifer Lesley Benjamin
- Mrs. Audrey Mary Branch
- Mr. Roy David Burke
- Mr. Ian Charles Carter
- Mr. David Gwyn Harry
- Mr. Nigel Boyd Kelly
- Advocate Julia Anne Springlett White.

7. Compliance with Rule 4

7.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

7.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

7.3 In accordance with Rule 4(3), the costs associated with the operation of the Complaints Panel and the operation of the Administrative Review Board process will be met from with the budget already allocated for this function.

7.4 In accordance with Rule 4(4), the Propositions have the unanimous support of the President and Members of the Policy & Resources Committee.

Yours faithfully

G St Pier
President

L Trott
Vice-President

J Le Tocq
A Brouard
T J Stephens

**SUMMARY OF CURRICULA VITAE OF PROPOSED COMPLAINTS PANEL MEMBERS AND
INDEPENDENT MEMBERS**

Summary Curriculum Vitae for Advocate Michael John Adkins

Advocate Michael John Adkins is a partner at Collas Crill Advocates.

Advocate Adkins was called to the Guernsey Bar in 2014 and specialises in regulatory and public law, insolvency and dispute resolution. He is a Solicitor of the Senior Courts of England and Wales and a Barrister and Solicitor of the Supreme Court of Victoria, Australia.

Before moving to Guernsey in 2009, Advocate Adkins was employed within the Enforcement Division of the Australian Securities & Investments Commission. In this role he led and advised the investigation and litigation teams in a broad range of company and financial services cases.

Since moving to Guernsey, Advocate Adkins has acted in a number of high profile public law cases, including Sark Electricity v EPCC, Alderney Renewable Energy v ACRE and Guernsey Post v OUR.

Summary Curriculum Vitae for Mr. John Paul Bate

Mr. Bate moved to Guernsey in 2007, having spent most of his career as a naval architect.

Since moving to Guernsey, Mr. Bate has retrained in counselling and psychology and currently runs his own counselling practice. He has also worked with the Youth Commission supporting the Duke of Edinburgh Awards Scheme programme and has volunteered with a number of youth organisations, the Street Pastors and the Caritas Community Café.

In addition to his qualifications as a naval architect, Mr. Bate holds a degree in Forensic Psychology and a Diploma in Therapeutic Counselling.

Summary Curriculum Vitae for Mrs. Jennifer Lesley Benjamin

Mrs. Benjamin was a member of the Child, Youth and Community Panel between 2010 and 2018 and has also served as a member of the Panel of Prison Visitors at Les Nicolles Prison.

Prior to moving to Guernsey, Mrs. Benjamin worked as a health visitor in London. She has also worked as a Complementary Health Educator in Guernsey and was Chairman of the Guernsey Family Planning Service between 2001 and 2005.

Mrs. Benjamin has also held a number of charitable roles and is currently working with the Guernsey Multiple Myeloma Support Group.

Summary Curriculum Vitae for Mrs. Audrey Mary Branch

Mrs. Audrey Mary Branch is a regulatory risk consultant. She is also a member of the Social Insurance Appeal Tribunals and the Tax on Real Property Appeal Panel.

Mrs. Branch has significant experience in the finance sector – particularly in regulation. From 1994-2015 she was employed by the Guernsey Financial Services Commission in various roles, including Deputy Director of Banking and Deputy Director of Fiduciary Policy and Supervision. She also has finance industry experience having worked for many banks including Barclays and HSBC.

Her professional memberships include Chartered Fellow of the Chartered Institute for Securities and Investment, Associate Membership of the Institute of Chartered Secretaries and Administrators and she is a member of the Honourable Society of the Inner Temple.

Summary Curriculum Vitae for Mr. Roy David Burke

Mr. Roy Burke is an Alderney resident. He has recently returned to Alderney after retiring in 2018 as the Chief Secretary for the St Helena Government.

Mr. Burke moved to Alderney in 2010 to take up the appointment as Chief Executive to the States of Alderney. He held this post until May 2014 when he moved to St Helena.

Prior to moving to Alderney, Mr. Burke had held a number of senior appointments within the UK Civil Service including Chief Executive at one of the Department for Transport's Executive Agencies and Chief Executive for the Criminal Injuries Compensation Appeal Panel.

Summary Curriculum Vitae for Mr. Ian Charles Carter

Mr. Carter is an Alderney resident, having moved to Alderney in 2014 having retired from a career in education, including ten years as Headmaster of Poole Grammar School.

Mr. Carter is a member of the Teaching Regulatory Agency and sits on teacher misconduct panels of the UK Department of Education. He also undertakes consultancy work for Ofqual, the Independent Schools Inspectorate and Cambridge International Examinations.

Mr. Carter is also training as a Methodist lay preacher in the Guernsey Circuit.

He is also a member of the Alderney Wildlife Trust and a Council member of the Alderney Society. He is a Fellow of the Royal Society of Arts and the Galton Institute and a member of the Royal Society of Biology.

Summary Curriculum Vitae for Ms. Shelaine Kay Green

Ms. Green retired in 2000 following a career in product management and marketing, including as European Marketing Director for Yahoo! Europe.

M.s Green has undertaken a number of charitable roles on Guernsey since her retirement, including Chair and Social Policy Advisor of the Guernsey Disability Alliance, a member of the Guernsey Community Foundation Advisory Panel and a founder and chair of Headway Guernsey.

In 2015, Ms. Green received the Guernsey Community Foundation's Outstanding Individual Achievement award.

Summary Curriculum Vitae for Mr. David Gwyn Harry

Mr. Harry is a retired Solicitor and is currently the Chief Executive of the Priaux Library.

Prior to his retirement in 2014, Mr. Harry specialised in property and land law and worked in Guernsey, London and South Wales.

Mr. Harry is the Chairman of the Planning Panel and has served as a member of the Panel since 2009. He is also a member of the Commonwealth Games Federation Court.

Between 2015 and 2018, Mr. Harry was the Chief Executive Officer for the Guernsey Sports Commission.

Mr. Harry has also served as a non-executive director for a number of trust companies and property funds.

He was also a member of St Peter Port Douzaine between 2008 and 2011 and a member of St Andrew's Douzaine from 2012 to 2016.

Summary Curriculum Vitae for Mr. Nigel Boyd Kelly

Mr. Nigel Boyd Kelly is an Alderney resident and is a member of the Child, Youth and Community Tribunal and the Taxation of Real Property Appeals Panel. He is also a non-executive director of the Alderney Housing Association.

Between 2009 and 2012, Mr. Kelly was a member of the States of Alderney and also sat as an Alderney Representative in the States of Deliberation in 2011 and 2012. Mr. Kelly was also a member of the Home Department and the Legislation Select committee during this period.

Mr. Kelly moved to Alderney in 1999, after a career with the West Midlands Police. He has held several roles in Alderney, including as a gaming inspector with the Alderney Gambling Commission. He was also an analyst with the Fiduciary Intelligence and Enforcement Department of the Guernsey Financial Services Commission.

Summary Curriculum Vitae for Advocate Julia Anne Springlett White

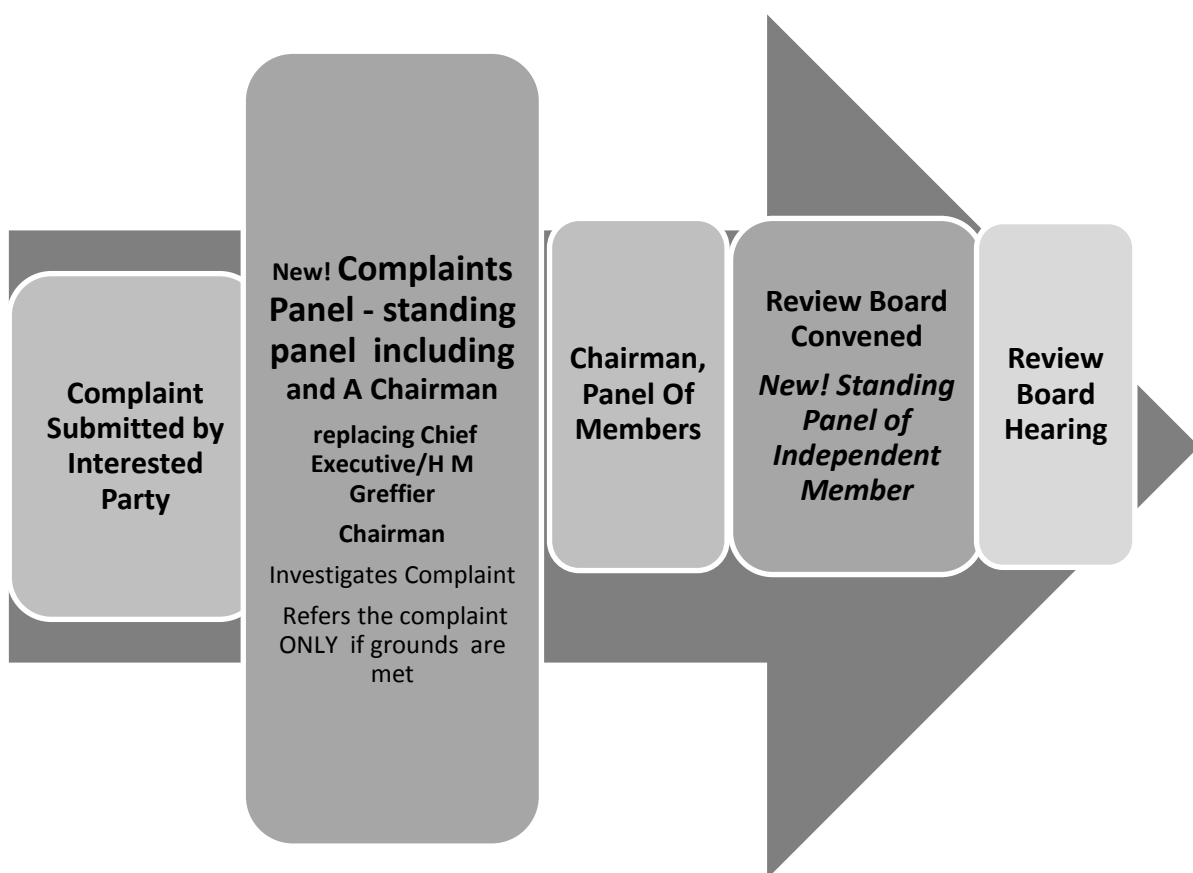
Advocate White retired from private practice in 2016 and currently serves as Chairman of the Social Insurance Appeal Tribunals, and Vice President of the Guernsey Tax Tribunal and Deputy Chairman of the Tax on Real Property Appeal Panel.

Prior to her retirement, Advocate White specialised in civil litigation, including land and property disputes, planning, and public law. She also undertook criminal defence work.

Advocate White also served as a member of the Planning Panel between 2011 and 2018.

APPENDIX 2

NEW REVIEW BOARD SYSTEM: DIAGRAM COMPLAINTS PANEL AND INDEPENDENT MEMBERS



THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

THE GUERNSEY LEGAL AID SERVICE – APPOINTMENT OF THE LEGAL AID
COMMISSIONER

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled “The Guernsey Legal Aid Service - Appointment of the Legal Aid Commissioner”, dated 16th August 2019, they are of the opinion:

1. To appoint Ms Kathryn Macken to the office of Legal Aid Commissioner, with effect from 1 October 2019, pursuant to Section 16(1) of The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, and
2. To note that the Committee has agreed that Ms Macken shall hold office for a period of three years, with effect from that date, pursuant to Section 17(1) of the Ordinance.

The above Propositions have 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.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

THE GUERNSEY LEGAL AID SERVICE – APPOINTMENT OF THE LEGAL AID
COMMISSIONER

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

16th August 2019

Dear Sir

1. Executive Summary

- 1.1. The Legal Aid Commissioner (“the Commissioner”) is an independent holder of public office, appointed by the States in pursuance of The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 (“the Ordinance”), on the nomination of the Committee *for* Employment & Social Security (“the Committee”).
- 1.2. Following a recruitment process, the Committee is pleased to recommend to the States the appointment of Ms Kathryn Macken. As this is the first appointment to the office, the Committee propose that the initial term of office should be three years.

2. The Guernsey Legal Aid Service

- 2.1. The Guernsey Legal Aid Service (GLAS) was established in September 2001. The GLAS provides funding for legal advice and representation in criminal and civil cases for members of the public who could not otherwise afford those services.
- 2.2. The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, came into force on 1st January 2019, and put the administration of the GLAS onto a stronger statutory footing in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003 (“the Law”).

3. The role of the Legal Aid Commissioner

- 3.1. Part IV of the Ordinance provides for the establishment of the independent Office of the Legal Aid Commissioner ("the Office"), which will be a new statutory office. The establishment of the Office is to meet the requirement within the Law for an appeals process.
- 3.2. The Office will give a person who is aggrieved by a decision of the Legal Aid Administrator recourse to an independent review of the decision.
- 3.3. The function of the Commissioner shall be to review decisions of the Legal Aid Administrator. The grounds for an application for review under section 19(3) of the Ordinance are that:
- the decision was ultra vires or there was some other error of law,
 - the decision was unreasonable,
 - the decision was made in bad faith,
 - there was a lack of proportionality, or
 - there was a material error as to the facts, or as to the procedure.
- 3.4. It should be noted that the right for review does not include a refusal of legal aid assistance on the grounds of not meeting the financial criteria. This includes the financial ineligibility of an applicant or the level of contributions that an assisted person is assessed to have to make towards that person's legal costs.

4. Term of office and remuneration

- 4.1. The Ordinance provides for the term of office of the Commissioner being for such term, not exceeding five years, as may be agreed between the Committee and the Commissioner at the time of appointment. A Commissioner whose term of office has expired shall be eligible for reappointment.
- 4.2. As this is the first appointment of a Commissioner, the Committee is intending that the initial appointment shall be for three years.
- 4.3. The Legal Aid Commissioner is not an employee of the States and will receive payment, at an hourly rate, only when required to undertake a responsibility under the Ordinance. It is anticipated that the Legal Aid Commissioner will be called on infrequently. An annual budget estimate of £5,000 has been applied for 2020 for the services of the Commissioner.

5. Appointment of a Legal Aid Commissioner

- 5.1. Following a recruitment process, the Committee is recommending Ms Kathryn Macken for appointment to the office of Legal Aid Commissioner. The Committee considers that Ms Macken's experience as a solicitor in the UK, including practising as a solicitor for the Court of Protection, makes her a most suitable candidate. A brief summary of Ms Macken's professional experience is appended to this Policy Letter. The Committee is recommending the States to approve the appointment of Ms Kathryn Macken for an initial term of office of three years, to run from 1 October 2019.

5. Committee Support for Propositions

- 5.1 In accordance with Rule 4(4) of the Rules of the Procedure of the Assembly and their Committees, it is confirmed that the propositions have the unanimous support of the Committee.

Yours faithfully

M K Le Clerc
President

S L Langlois
Vice - President

J A B Gollop
P J Roffey
E A Yerby

M J Brown
Non-States Member

A R Le Lièvre
Non-States Member

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

INDEPENDENT STATES MEMBERS' PAY REVIEW PANEL – FINAL REPORT

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'Independent States Members' Pay Review Panel – Final Report' dated 1 July, 2019, they are of the opinion:-

1. That the remuneration paid to Members of the States of Deliberation with effect from 1st July 2020 shall be as follows:
 - a. President, Policy & Resources Committee £71,248 *
 - b. President:
 - Committee *for* Economic Development
 - Committee *for* Education, Sport & Culture
 - Committee *for* Employment & Social Security
 - Committee *for the* Environment & Infrastructure
 - Committee *for* Home Affairs
 - Committee *for* Health & Social Care
 - States' Trading Supervisory Board
 - Vice President, Policy & Resources Committee
 - States lead member for external relations, Policy & Resources Committee £54,744 *
 - c. President:
 - Development & Planning Authority
 - States' Assembly & Constitution Committee
 - Scrutiny Management Committee
 - Member, Policy & Resources Committee £46,599 *
 - d. All other Deputies £40,521 *
 - e. Alderney Representatives with a seat on a Principal or Non-Principal Committee £22,365 *
 - f. All other Alderney Representatives £13,233 *

* Social Security uplift to be deducted for those above the old age pension age

with an adjustment in accordance with the change in Guernsey median earnings during 2019 provided that, in the event of a negative change, no adjustment should be made.

2. That, in the event that a President of the Policy & Resources Committee, a Principal Committee, the Development & Planning Authority, the States' Assembly and Constitution Committee, the Scrutiny Management Committee or the States' Trading Supervisory Board is unable to fulfil their duties for a period in excess of four weeks and the Vice President takes on the full responsibilities of the post, his or her remuneration will temporarily increase to the level of a President.
3. That the remuneration paid to Non-States Members of the six Principal Committees, the Development and Planning Authority, the Scrutiny Management Committee (including the Legislation Review Panel) or the Transport Licensing Authority from 1st July 2020 should be £2,154 per annum (with an adjustment in accordance with the change in Guernsey median earnings during 2019 provided that, in the event of a negative change, no adjustment should be made).
4. That the remuneration paid to Non-States Members of the States' Trading Supervisory Board from 1st July 2020 should be £8,615 per annum (with an adjustment in accordance with the change in Guernsey median earnings during 2019 provided that, in the event of a negative change, no adjustment should be made).
5. That any Alternative Alderney Representative shall be entitled to be awarded in respect of his attendance at a properly convened meeting of the States of Deliberation which he has been appointed to attend, pursuant to Section 4 of the States of Guernsey (Representation of Alderney) Law, 1978 an attendance allowance of £76 per half-day or part thereof (with an adjustment in accordance with the change in Guernsey median earnings during provided that, in the event of a negative change, no adjustment should be made), which sum shall be subject to tax.
6. That remuneration for States Members, Non-State Members and Alternative Alderney Representatives should remain benchmarked against median earnings, but shall be fixed for the four-year term of office in accordance with the measures outlined in the Panel's Report.
7. To direct the Policy & Resources Committee to continue to provide States Members with standard information technology equipment and software.

8. To direct the Policy & Resources Committee to present to the States of Deliberation for approval an amended version of the Rules for Payments to States Members, Former States Members and Non-States Members that would give effect to their above decisions.
9. To direct the Policy & Resources Committee to set up an independent review of the remuneration to be paid to States Members and Non-States Members not later than 1st May 2022; or at any other time in the event of a change in circumstances that has a significant effect on the roles and responsibilities of those Members.

The above Propositions have 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.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

INDEPENDENT STATES MEMBERS' PAY REVIEW PANEL – FINAL REPORT

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

1 July 2019

Dear Sir

1 Executive Summary

- 1.1 In this policy letter, the findings and recommendations of the Independent States Members' Pay Review Panel ('the Panel') are presented to the States of Deliberation for their consideration.
- 1.2 The Policy & Resources Committee ('the Committee') thanks the Chairman and Members of the Panel for their time and efforts spent engaging with the public, Members of the States, and other stakeholders, in order to provide recommendations for the remuneration of States Members now that the new system of government has had sufficient time to establish itself.
- 1.3 The Committee has taken the same position as that established by the Policy Council when it commented on the 2016 independent report on States Members pay, namely, that it is neither in a position to, nor would it be appropriate for it to, develop alternative proposals. In arriving at this position the Committee has been mindful of the fact that individual States Members will have their own views on what they consider to be an appropriate system and level of remuneration. The Policy & Resources Committee believes that it is for each States Member to vote on the proposals according to their conscience.

2 Background

- 2.1 On 26th January, 2016 (Billet d'État I, Article IX), the States resolved:

"To direct the Policy & Resources Committee to set up an independent review of the remuneration to be paid to States Members and Non-States Members not

later than 1st May 2018; or at any time in the event of a change in circumstances that has a significant effect on the roles and responsibilities of those Members.”

- 2.2 The States Members’ Pay Review Panel was duly established by the Policy & Resources Committee to review the remuneration of States Members and Non-States Members. The Committee appointed the following members to the Panel:

Mr Alex Rodger (Chairman)
Mrs Carol Goodwin
Mr Richard Digard
Mrs Julia Martin

- 2.3 The terms of reference of the Panel were as follows:

“Determine, following consultation with the Policy & Resources Committee and such other individuals or organisations as is considered appropriate, whether or not the main principles under which remuneration payments are now made appear to be justified given the new system of government has been implemented and it has had sufficient time to establish. This should include whether the current system fairly and properly reflects the nature of the roles of all Deputies, Alderney Representatives, Non-States Members and those elected to positions of special responsibility.”

- 2.4 The Panel agreed that the main principles, carried over from the previous Review, remained relevant and used them (with very minor updating) to guide its Review:

- a) The remuneration package should permit widespread participation by individuals of diverse age and experience;
- b) Remuneration should not lead to participation for financial reasons alone;
- c) Remuneration should reflect an element of service to the community;
- d) Remuneration should reflect an individual’s commitment of time as an important but not determinant factor;
- e) Remuneration should be fair and transparent; and
- f) Remuneration should be administratively simple.

- 2.5 The Panel submitted the final version of its Report to the Committee in February 2019.

3 The Report of the States Members' Pay Review Panel

3.1 After a period of consultation with States Members, Non-States Members, private sector organisations and the wider public, the Panel recommended:

- a) remuneration should remain benchmarked against median earnings, but is fixed for the four-year term of office;
- b) there should be a re-structuring of the 'remuneration Band' system that currently differentiates the roles undertaken by States Members. This new system should introduce a new intermediate Band that accommodates the Presidents of non-Principal Committees, with the exception of the President of the States' Trading Supervisory Board, as well as the two ordinary Members of the Policy & Resources Committee;
- c) Alderney Representatives who take up a role as President of a Principal or non-Principal Committee, or as a Policy & Resources Committee Member, should receive equitable remuneration to States of Guernsey Members;
- d) there should be no change to the remuneration for Non-States Members;
- e) the Policy & Resources Committee should consider whether it would be desirable to promote more widely the adoption of Non-States' Members on the various Committees. Moreover, consideration should be given to the States' participation in the Non-Executive Director Development Programme;
- f) there should be no change to the Social Security or Income Tax status of Members, but, for prospective candidates, attention should be drawn to the anomaly between a Member's self-employed status for Social Security purposes, and employed status for Income Tax purposes;
- g) there should be no additional provisions for the pensions of States Members. However, the Committee *for* Employment & Social Security may wish to consider the inclusion of States Members in its upcoming Secondary Pension proposals; and
- h) making amendments to the 'Information for Prospective Candidates' that further outline the roles and responsibilities of a States Member, such as the level of workload and time commitment that is required; the attributes required to be an effective politician; and the support that is offered to new Members.

- 3.2 In adopting the recommendations of the Panel, there will be a consequent restructuring of the remuneration system. The current and proposed remuneration for Members of the States of Deliberation is outlined below (which will change in May 2020 in line with any increase in Guernsey median earnings during 2019).

Current system of remuneration

	* Deputy £	* Alderney Representative £
President, Policy & Resources Committee	71,248	46,725
President: Committee <i>for</i> Economic Development Committee <i>for</i> Education, Sport & Culture Committee <i>for</i> Employment & Social Security Committee <i>for the</i> Environment & Infrastructure Committee <i>for</i> Home Affairs Committee <i>for</i> Health & Social Care States' Assembly & Constitution Committee Scrutiny Management Committee Members of the Policy & Resources Committee	54,744	30,222
All Other Deputies	40,521	-
Alderney Representatives with a seat on a Committee, the Transport Licensing Authority, the Development & Planning Authority or the States' Trading Supervisory Board	-	22,365
All other Alderney Representatives	-	13,233

* The uplift for Social Security (i.e. the difference between the contribution rates of employed and self-employed persons) is deducted for those above the old-age pension age.

The maximum remuneration payable under this system is £1.786million (assuming that Alderney representatives do not occupy a position as a President or as a member of the Policy & Resources Committee).

Proposed system of remuneration

	* £
President, Policy & Resources Committee	71,248
President: Committee <i>for</i> Economic Development Committee <i>for</i> Education, Sport & Culture Committee <i>for</i> Employment & Social Security Committee <i>for the</i> Environment & Infrastructure Committee <i>for</i> Home Affairs Committee <i>for</i> Health & Social Care States' Trading Supervisory Board Vice President, Policy & Resources Committee States lead member for external relations, Policy & Resources Committee	54,744
President: Development & Planning Authority States' Assembly & Constitution Committee Scrutiny Management Committee Member, Policy & Resources Committee	46,599
All Other Deputies	40,521
Alderney Representatives with a seat on a Committee, the Transport Licensing Authority, the Development & Planning Authority or the States' Trading Supervisory Board	22,365
All other Alderney Representatives	13,233

The maximum remuneration payable under this system is £1.774million (assuming that Alderney representatives do not occupy a position as a President or as a member of the Policy & Resources Committee).

4 Resource implications

- 4.1 The proposed remuneration structure recommended by the Panel has a maximum cost which is £12,000 per annum less than the maximum cost of the current system (assuming that Alderney representatives do not occupy a position as a President or as a member of the Policy & Resources Committee). Therefore, there is a potential saving of £48,000 over the four-year political term.
- 4.2 The Panel's recommendation to fix remuneration for the four-year political term would bring a more substantial saving of approximately £35,000 the second year, £71,000 the third year, and £108,000 the fourth year of the term. These figures are based on a median earnings increase of 2% per annum, and would amount to a total potential saving of in excess of £200,000 over the four-year political term.

- 4.3 It is expected that there will be slightly less resource required to administer the system of remuneration recommended by the Panel compared to current arrangements.

5 Compliance with Rule 4

- 5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 5.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not to be put into effect.
- 5.3 In accordance with Rule 4(3), the Propositions are not requesting the States to approve additional funding.
- 5.4 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.
- 5.5 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to advise the States on matters relating to the financial resources of the States.

Yours faithfully

G A St Pier
President

L Trott
Vice-President

J Le Tocq
T J Stephens
A Brouard

INDEPENDENT STATES MEMBERS' PAY REVIEW PANEL

REVIEW OF STATES MEMBERS AND NON-STATES MEMBERS' REMUNERATION

REPORT TO THE POLICY & RESOURCES COMMITTEE

31st JANUARY 2019

1 EXECUTIVE SUMMARY

- 1.1 Now that the new structure of government has had time to establish itself, the States Members Pay Review Panel ('the Panel') has been tasked by the Policy & Resources Committee with determining for the next political term, commencing 1st July 2020, whether or not the six main principles under which States Members and Non-States Members are currently remunerated are justified and appropriate.
- 1.2 Overall, the Panel has concluded that these six main principles remain appropriate to guide the remuneration of States Members. In reaching this conclusion, the Panel placed significant weight on the largely supportive views expressed on the Principles in the consultations undertaken with the public and with States Members.
- 1.3 After considering the public, States Members' and Non-States Members' consultations as well as a productive States Members' workshop and other consultation meetings, the Panel considers that the current remuneration of States Members should remain linked with median earnings. However, the Panel also recommends fixing remuneration levels for the four-year term of office commencing June 2020. This is consistent with business community practice for fixed term contracts and supports the principles of fairness, transparency and remuneration being administratively simple.
- 1.4 Furthermore, it recommends adjustments are made to the banding of the different roles undertaken by States Members. For example, it recommends that Members of the Policy & Resources Committee are divided into three separate bands based on their respective roles and responsibilities. Similarly, it has received sufficient evidence to differentiate the remuneration levels of Principal Committee Presidents with those of the non-Principal Committees. The evidence received identified an anomaly when assessing the responsibilities allocated to the States' Trading Supervisory Board, and the Panel is therefore proposing that the President of the Board be aligned with a Principal Committee banding.
- 1.5 Should these proposals to fix remuneration for the four-year term and to re-structure the bands of remuneration be agreed and implemented, it is estimated, based on 2018 figures, that there would be a financial saving of £248,000 over a political term.

2 INTRODUCTION AND TERMS OF REFERENCE

2.1 On 26th January, 2016 (Billet d'État I, Article IX), the States resolved:

“10. To direct the Policy and Resources Committee to set up an independent review of the remuneration to be paid to States Members and Non-States Members not later than 1st May 2018; or at any other time in the event of a change in circumstances that has a significant effect on the roles and responsibilities of those Members.”

2.2 The Policy & Resources Committee accordingly established an independent States Members' Pay Review Panel to review the remuneration of States Members and Non-States Members, and appointed the following members:

1. Mr Alex Rodger
2. Mrs Carol Goodwin
3. Mr Richard Digard
4. Mrs Julia Martin

The Committee appointed Mr Rodger as Chairman for continuity, given he had chaired the previous Review.

2.3 The terms of reference of the Panel were to:

Determine, following consultation with the Policy & Resources Committee and such other individuals or organisations as is considered appropriate, whether or not the main principles under which remuneration payments are now made appear to be justified given the new system of government has been implemented and it has had sufficient time to establish. This should include whether the current system fairly and properly reflects the nature of the roles of all Deputies, Alderney Representatives, Non-States Members and those elected to positions of special responsibility.

3. METHODS

3.1 The Panel considered it essential to hear the views of States Members and the wider public on the issue of remuneration, and engaged with both through respective consultations that sought their input on the guiding principles of remuneration as well as remuneration in general.

3.2 These consultations ran over several weeks and were publicised in local and social media as well as online to try to encourage as much participation and engagement as possible. However, the Panel note that only half of States Members responded to the consultation, although the issue at hand is financially relevant to them. In the case of the public consultation, the Panel received 131 responses. Appendix 1 provides a summary of the responses.

- 3.3 The feedback received through these consultations was varied. On the one hand, there was resounding support in both the public and States Member consultations for the guiding principles of remuneration, outlined in Section 4 of this Report. On the other, there were mixed views on whether the remuneration system as it exists currently is appropriate, specifically the remuneration received for the varying roles undertaken by States Members.
- 3.4 The Panel also sought direct engagement with States Members where they could freely express their views on the issue. Given the timescale in which the Panel had to report back to the Policy & Resources Committee, it did not seek one-on-one engagement with Deputies, and instead sought their views through a workshop and Members' survey.
- 3.5 The Panel once again note the attendance at the workshop, being attended by only 15 States Members. However, it also notes its awareness of some Members having a clash of commitments elsewhere.
- 3.6 Where there were Members who wished to but could not attend the workshop, the Panel sought alternative engagement. This included meeting the Committee *for* Education, Sport & Culture, and separately, the States' Assembly & Constitution Committee, ahead of one of their scheduled meetings, as well as giving all States Members the opportunity to provide written submissions. The option to write to the Panel was extended to Non-States Members, private sector organisations and the wider public.
- 3.7 The feedback received through the workshop and other meetings with States Members was constructive in aiding the Panel's deliberations. It largely remained in alignment with the results of the consultation, and reflected the varied and divided views on some of the issues. When considering its recommendations, the Panel ensured it took into account the feedback and views received through these engagements, as well as from the public input received.

4 PRINCIPLES

- 4.1 The six guiding principles, carried over from the previous Review, are as follows:
- A) The remuneration package should permit widespread participation by individuals of diverse age and experience;
 - B) Remuneration should not lead to participation for financial reasons alone;
 - C) Remuneration should reflect an element of service to the community;
 - D) Remuneration should reflect an individual's commitment of time as an important but not determinant factor;
 - E) Remuneration should be fair and transparent; and

F) Remuneration should be administratively simple.

4.2 The consultation responses received by the Panel were largely supportive of these principles and the Panel concluded that these remained relevant and used them to guide its Review.

4.3 In doing so the Panel made two minor amendments to the principles. Firstly, it resolved to remove the words “regardless of gender” from Principle (A) and, secondly, to insert the words “fair and” immediately after “should be” in Principle (E), as detailed above.

5 ROLES AND RESPONSIBILITIES

5.1 At the Members’ workshop and in its online survey of Members and Non-States Members, the Panel sought views on the role of a Deputy, and the perception of their role for prospective electoral candidates and the wider community.

5.2 Representations received indicated that the workload and time commitment required of States Members had continued to increase, with many viewing it as a full time role, or, at least, one making it extremely difficult to undertake other remunerated work. However, while accepting these opinions, it is also evident from the Panel’s findings that this view is much influenced by the manner in which individuals approach the role of States Member and/or the relative emphasis they give to different elements of it.

5.3 As such, when taking into account Principle C (remuneration should reflect an element of service to the community) the Panel remains of the view expressed in 2015 that an element of time commitment should reflect such service and that the role of a States Member is not full time for the purposes of remuneration. It follows from this that potential candidates ought not to be deterred from standing in the belief that other external interests, paid or otherwise, cannot be retained or accommodated. The role of the President of Policy & Resources Committee is, however, regarded by the Panel as full time.

5.4 At the States Members’ workshop, there was significant discussion around the possibility of publishing a ‘role brief’ that outlined the responsibilities, duties and likely workload of a Deputy. There were varied views on this issue, with some arguing that a role brief would help to clarify precisely what it was that Deputies do and therefore assist in assessing an appropriate level of remuneration. Conversely, others were opposed to the idea, suggesting that it would be an unnecessary use of resources and would be information that was not needed and not of interest to the public.

- 5.5 One particular issue that the Panel considers noteworthy is the implications of the recent referendum result on the 2020 election. While these implications are currently unclear, it is thought that it may lead to a larger field of candidates and, similarly, it may lead to a larger number of new Deputies who may benefit from additional information on the role of a States Member.
- 5.6 After deliberating on the various views on the topic, the Panel considers that there may be some merit in providing additional information to prospective electoral candidates. However, rather than publishing a 'role brief' as an individual document, the Panel recommends making additions and amendments to the already published 'Information for Prospective Candidates' document which was released by the States ahead of the 2016 General Election.
- 5.7 While the Panel notes that the 'Information for Prospective Candidates 2016' document already contains a large amount of useful information for candidates, it believes that there are some areas where there is room for expansion. These areas include highlighting: the duties of a Deputy; the workload and time commitment that is required, such as how much reading is expected; the attributes that are required to be an effective politician; and the support that is offered to them.
- 5.8 The States' Assembly & Constitution Committee is a body that could potentially draft such amendments to the Information for Prospective Electoral Candidates document if the Panel's views were to be acted upon.

6 REMUNERATION

- 6.1 The current system of remuneration is structured around three bands: Band A, comprised of the President of the Policy & Resources Committee only, is the highest band; Band B, comprised of the six Principal Committee Presidents, the Presidents of States' Assembly & Constitution Committee and the Scrutiny Management Committee, and the four additional Members of the Policy & Resources Committee is the middle band; and all other Deputies make up Band C.
- 6.2 The current rates of remuneration for these different bands are set out in the table below. This is based on the 2018/19 remuneration rates, excludes Alderney Representatives and assumes that all Deputies are under the Guernsey old age pension age and therefore includes uplifts for their Social Security contributions.

	Number	Remuneration	Total
Banding A			
President, Policy & Resources Committee	1	68,972	68,972
Banding B	12	52,995	635,940
President, Economic Development			
President, Education, Sport & Culture			
President, Employment & Social Security			
President, Environment & Infrastructure			
President, Home Affairs			
President, Health & Social Care			
President, States' Assembly & Constitution Committee			
President, Scrutiny Management Committee			
Vice-President, Policy & Resources Committee			
States' lead member for external relations, Policy & Resources Committee			
Member, Policy & Resources Committee			
Member, Policy & Resources Committee			
Banding C	25	39,226	980,650
All Other Deputies			
Total	38		1,685,562

- 6.3 As the new system of government in Guernsey has now been established and in operation for over two years and, having consulted with various Members on the workloads in their respective roles, the Panel believes there is scope to further revise the above rates of remuneration in light of this experience.

INTERMEDIATE BANDING FOR NON-PRINCIPAL COMMITTEE PRESIDENTS

- 6.4 Reflecting that the new system of government is now established, and taking into account feedback from the consultation process, the Panel proposes that there should be a differentiation between Presidents of Principal Committees and Presidents of Non-Principal Committees.
- 6.5 While retaining the current premium for Presidents of Principal Committees, the Panel recommends the introduction of a new intermediate Band to sit between Bands

B and C as described above. This Band would provide a premium of 15% above the remuneration of all other Deputies in Band C and would apply to the Presidents of States' Assembly & Constitution Committee, the Scrutiny Management Committee, and the Development & Planning Authority.

- 6.6 The Panel believes this change is justified given the workloads and accountability of the Presidents of these Committees when compared against both the workloads of Members who sit in Band C and the Presidents of the Principal Committees in Band B.
- 6.7 Notwithstanding its conclusion in paragraph 6.6, the Panel has determined there should be one exception. Having considered feedback on the variety, scope and commerciality of its duties, the Panel is persuaded that the responsibilities held by the States' Trading Supervisory Board are more aligned to that of a Principal Committee. Consequently, the Panel recommends that the President of the States' Trading Supervisory Board is included within Band B.

POLICY & RESOURCES COMMITTEE MEMBERS

- 6.8 The Panel does not recommend any change in banding for the President of the Policy & Resources Committee, and, similarly, does not recommend any change in banding for the Vice-President or the States lead member for external relations.
- 6.9 However, the Panel recommends that remuneration for the remaining two roles of the Policy & Resources Committee be realigned with the new Intermediate Band described in the above section, alongside the Presidents of the Non-Principal Committees.
- 6.10 The Panel considers this to be justified as it continues to recognise the accountability and diversity of the role of a member of the Policy & Resources Committee, but highlights the varying workloads undertaken by the individual roles of the Committee as set out in its Mandate.

PROPOSED REMUNERATION SYSTEM

- 6.11 The above recommendations would provide greater clarity about the responsibilities of States Members, and would allow the levels of remuneration to reflect the different nature of these roles.
- 6.12 Should these changes be implemented, the newly proposed remuneration system would be re-banded as follows, based on 2018/19 rates of remuneration:

	Number	Remuneration	Total
Banding A President, Policy & Resources Committee	1	68,972	68,972
Banding B President, Economic Development President, Education, Sport & Culture President, Employment & Social Security President, Environment & Infrastructure President, Home Affairs President, Health & Social Care President, States' Trading Supervisory Board Vice president, Policy & Resources Committee States' lead member for external relations, Policy & Resources Committee	9	52,995	476,955
Banding C President, States' Assembly & Constitution Committee President, Scrutiny Management Committee President, Development & Planning Authority Member, Policy & Resources Committee Member, Policy & Resources Committee	5	45,110	225,550
Banding D All Other Deputies	23	39,226	902,198
Total	38		1,673,675

- 6.13 While not the driver for these proposed changes, the recommendation would nevertheless save approximately £12,000 per annum, therefore estimated to save £48,000 over a four-year political term. While this figure is not in itself a particularly significant saving, the Panel believes the re-structuring is required due to the further clarity it would provide on the varying nature of the roles undertaken by Members.
- 6.14 As at present, in the event that a President is unable to fulfil his or her duties for a period in excess of four consecutive weeks and the Vice President takes on the full

responsibilities of that post, his or her remuneration should temporarily increase to the level of the President of the relevant Committee.

MEDIAN PAY AND FIXED REMUNERATION

- 6.15 Remuneration is currently benchmarked against median earnings in Guernsey, changing year-on-year alongside any upward percentage change in median earnings. There were mixed views on this in the various consultations and workshops, many strongly held. After significant deliberation on the various responses, and taking into account these views, the Panel believes that the link between remuneration and median earnings is justified because it establishes a direct relationship (in terms of remuneration) between States Members and the people of Guernsey. They therefore conclude that this link should be maintained, subject to the following recommendation.
- 6.16 Reflecting its desire to support the principles which guide its review, specifically the principles that remuneration should be transparent and administratively simple, the Panel recommends remuneration rates should be fixed for the four-year term of office for which States Members are elected. This would bring payment of remuneration into alignment with the business community practice for fixed term contracts and also remove a level of administrative overhead.
- 6.17 The Panel believes there are some additional benefits from this approach. It removes potentially adverse publicity for States Members when median earning figures are published each year, particularly if employees in the private or public sectors have not received automatic increases in remuneration. It also provides certainty in financial planning for potential candidates and existing Members over the four-year term and it is an acknowledgement, prevalent in the private sector that any increments need to be fully justified and funded.
- 6.18 The question may be asked as to what happens at the end of the four-year term. The Panel believes the current system of an independent body widely inquiring into and considering appropriate levels of remuneration for States Members is well established. Any future Panels are likely to be sufficiently robust to deal with circumstances as they arise, impartially apply the six established principles of remuneration, and consider the benchmark link to median earnings as it stands at the time. In the view of this Panel, the benefits of fixed remuneration for a four-year term outweigh any potential negativity of subsequent uplifts for the next Parliamentary term.
- 6.19 The Panel, recognising the existing provision for annual adjustments, recommends that the starting level for States Members' remuneration for the new term should be based on the amounts calculated following the inclusion of the annual percentage

movement in median earnings due to be published in April 2020 and applied under current arrangements with effect from 1st May 2020.

- 6.20 If remuneration were to be fixed for the four-year term as proposed, a saving could arise. Based on a median earnings increase of 2% per annum which is similar to that experienced this term, that would amount to a notional gross saving of £200,000, as calculated and ratified by the States Treasury:

Year 2: £33,000

Year 3: £67,000

Year 4: £100,000

- 6.21 The Panel therefore considers the above recommendation justified based on its adherence to the main principles of remuneration, and because it brings the system into alignment with accepted business community practice. The significant financial saving, while not the main intention of the proposed change, may also be welcomed.

ALDERNEY REPRESENTATIVES

- 6.22 The Panel received no representations in respect of the remuneration of the Alderney Representatives. The Panel therefore proposes that the current arrangements in respect of the basic remuneration should remain in place albeit fixed for the four-year political term following any percentage uplift in median earnings published in April 2020. The figures below reflect the role of an Alderney Representative who either only attends meetings of the States of Deliberation or has a seat on a Principal or Non-Principal Committee, to reflect the additional responsibilities of an individual elected to a States Committee.
- 6.23 In making the recommendation in 6.22, should an Alderney Representative be elected as a President of a States Committee or Policy & Resources Member named in Bands A, B or C it seems equitable that the rates of remuneration applicable to those bands should apply.

	Total
With a seat on a Principal or Non-Principal Committee	£21,650
All Other Alderney Representatives	£12,810

NON-STATES MEMBERS

- 6.24 With regards to Non-States Members, the Panel recommends the current remuneration level is retained, including the higher level that is paid to Members of the States' Trading Supervisory Board. As with Members, the starting level should reflect the percentage movement in median earnings addressed in 6.19 and is fixed for the four-year political term.
- 6.25 The Panel believes this to be justified based on its perception of the role of a Non-States Member as largely voluntary, taken up by citizens who want to give something back to the community. Similarly, it notes that there is not a shortage of individuals willing to hold these positions, and so therefore does not believe remuneration is needed as an incentive for citizens to put themselves forward for such positions.
- 6.26 Remuneration rates for Non-States Members are therefore recommended to remain in the following structure. The table below is based on 2018/19 rates of remuneration:

	Total
States' Trading Supervisory Board	£8,340
All other Committees	£2,085

- 6.27 The Panel has received evidence that suggests, where Committees have incorporated them into their Committee, Non-States Members have produced a significantly positive and beneficial impact on deliberations. The Panel has also received feedback that suggests Non-States Members provide invaluable knowledge that may otherwise be lacking on Committees, and, similarly, can provide a non-political viewpoint on issues. Non-States Members can also be changed easily and frequently, perhaps as different policies or projects are progressed and additional skills are required by a Committee but for a short timescale.
- 6.28 Moreover, the allocation of members of the public to a Non-States Member position gives them the opportunity to gain a deeper and more comprehensive understanding of the workings of government, which they may be able to draw on should they wish to stand for election in the future.
- 6.29 With this in mind, while noting that this goes beyond its Terms of Reference, the Panel believes it would be useful for the Policy & Resources Committee to consider whether the use of Non-States Members on the various Committees should be promoted more widely within the States.

- 6.30 In support of Principle A (to encourage widespread participation by individuals of diverse age and experience), the Panel recommends consideration be given to States' participation in the Non-Executive Director Development Programme, run in conjunction with the Guernsey Training Agency. As highlighted by the previous Panel in its 2015 Report, this would provide a zero-cost approach of providing training for potential future States Members and would also increase the pool of those with experience to act as Non-States Members.

7 INCOME TAX AND SOCIAL SECURITY

- 7.1 Much feedback was received by the Panel from Members about the anomaly of being categorised under Social Security guidelines as 'self-employed', yet treated as 'employed' for Income Tax purposes.
- 7.2 However, Members under the old age pension age receive a supplement of the difference between the employed and self-employed Social Security contribution, so they are not financially disadvantaged by being treated as self-employed by Social Security.
- 7.3 While the Panel is not recommending any changes to the status of States Members, as this would fall outside its Terms of Reference, it nevertheless considers it worth noting that this anomaly exists, and suggests that it should be made more visible for prospective electoral candidates in any information made available. It is of course ultimately a matter for the States itself whether it believes the anomaly should be addressed.

8 PENSIONS AND PARACHUTE PAYMENTS

PENSIONS

- 8.1 The Panel does not recommend any additional provisions for the pensions of States Members, this issue having been fully explored in the past and no fresh information arising to change the current position. However, the Panel believes that the Committee for Employment & Social Security may wish to consider whether Members should be included in its forthcoming proposals on Secondary Pensions.

PARACHUTE PAYMENTS

- 8.2 The Panel considered fully the issue of so-called 'parachute', or severance, payments for States Members, which would provide some financial assistance for those Members who failed to gain re-election, and received significant feedback on this point both for and against.

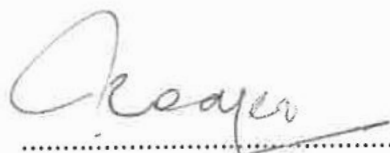
- 8.3 In deciding to make no recommendation on this matter, the Panel was particularly mindful of the views of electors not voting for a candidate and then seeing them continuing to be 'paid' after an election defeat as well as the fact that individuals seeking election are fully aware that it is, in effect, a fixed term role with no guarantee of extension.

9 RECOMMENDATIONS

9.1 The Panel recommends:

- i. remuneration should remain benchmarked against median earnings, but is fixed for the four-year term of office;
- ii. there should be a re-structuring of the 'remuneration Band' system that currently differentiates the roles undertaken by States Members. This new system should introduce a new intermediate Band that accommodates the Presidents of non-Principal Committees, with the exception of the President of the States' Trading Supervisory Board, as well as the two ordinary members of the Policy & Resources Committee;
- iii. Alderney Representatives who take up a role as President of a Principal or Non-Principal Committee, or as a Policy & Resources Committee Member, should receive equitable remuneration to States of Guernsey Members, as outlined in the proposed remuneration system in 6.12;
- iv. there should be no change to the remuneration for Non-States Members;
- v. the Policy & Resources Committee should consider whether it would be desirable to promote more widely the adoption of Non-States' Members on the various Committees. Moreover, consideration should be given to the States' participation in Non-Executive Director Development Programme;
- vi. there should be no change to the Social Security or Income Tax status of Members, but, for prospective candidates, attention should be drawn to the anomaly between a Members self-employed status for Social Security purposes, and employed status for Income Tax purposes;
- vii. there should be no additional provisions for the pensions of States Members. However, the Committee *for* Employment & Social Security may wish to consider the inclusion of States Members in its upcoming Secondary Pension proposals; and

- viii. making amendments to the 'Information for Prospective Candidates' document that further outline the roles and responsibilities of a States Member, such as the level of workload and time commitment that is required; the attributes required to be an effective politician; and the support that is offered to new Members.



Alex Rodger, Chair

20 Feb 2019



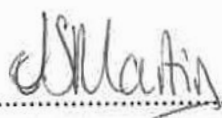
Carol Goodwin

20th Feb 2019



Richard Digard

25 Feb 2019



Julia Martin

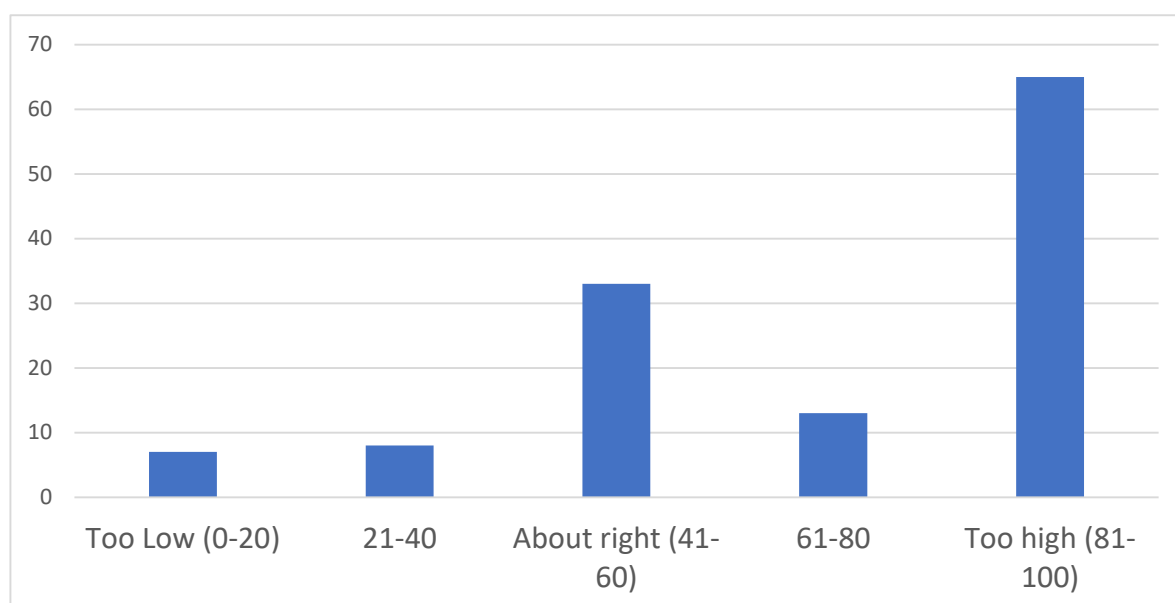
21st Feb 2019

APPENDIX 1 of the Independent Pay Review Panel Report

The Panel issued a public consultation on the issue of States' Members' remuneration on 10th September 2018. This consultation ran for several weeks, closing on 15th October 2018. It was reported on and publicised in the local and social media, as well as online. In total, the Panel received 131 responses from members of the public.

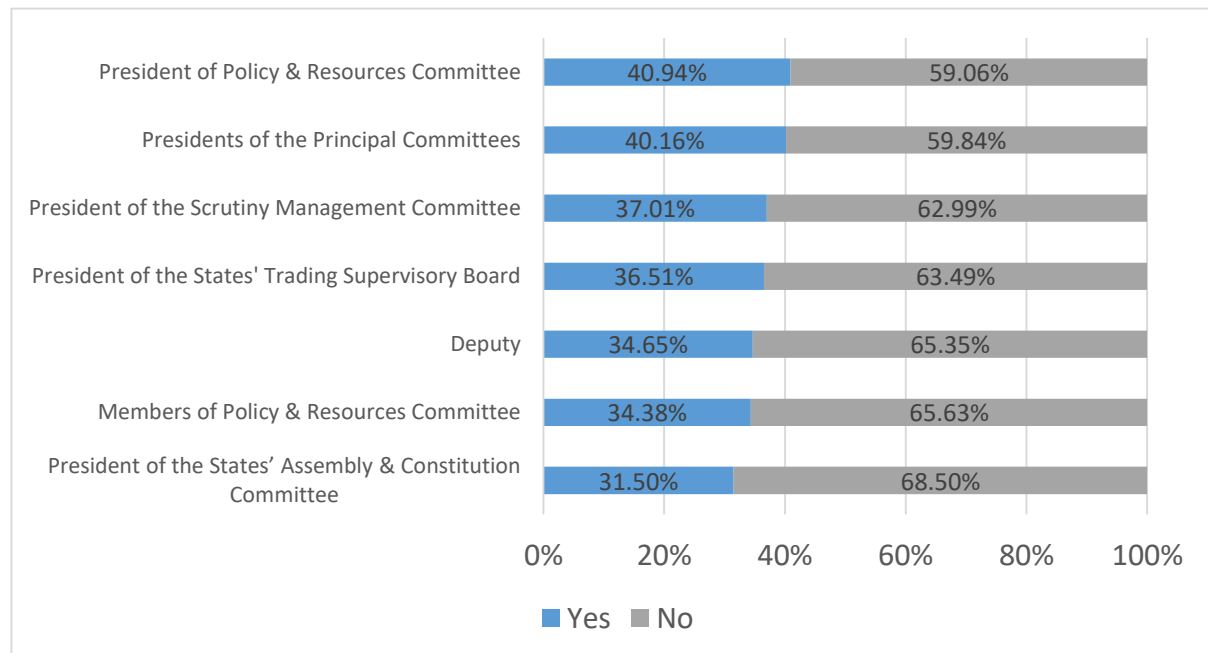
Below are the four questions asked in the consultation, and the answers received:

1. Do you believe the current level of remuneration for Deputies and Non-States' Members is too high, about right or too low?



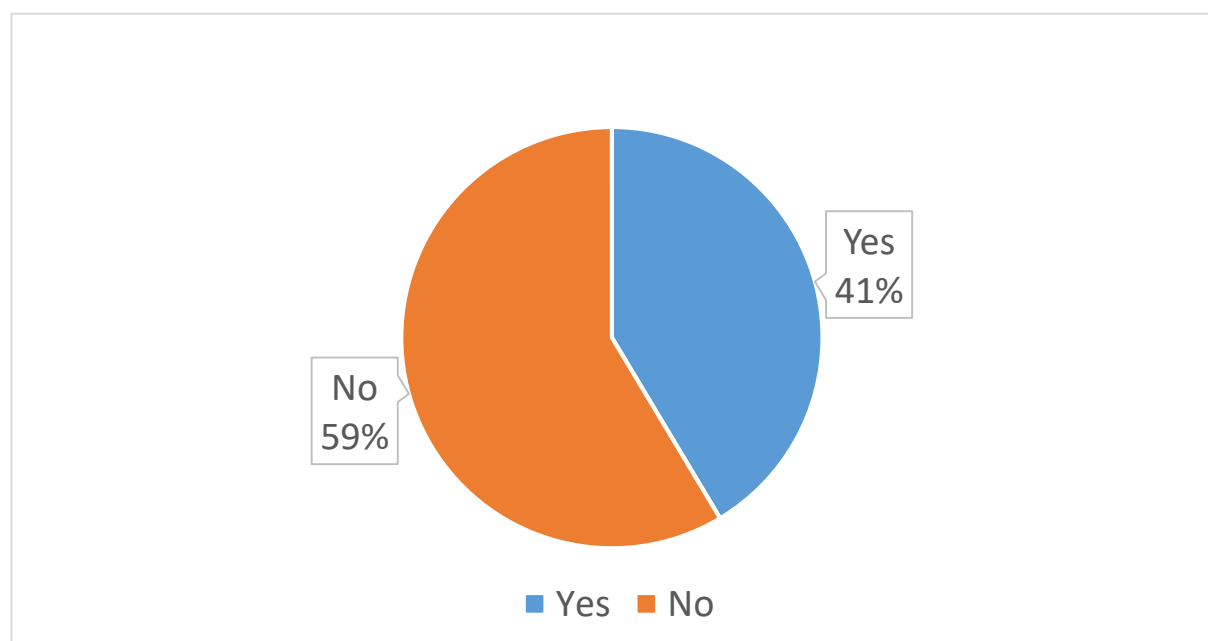
This graph represents a spectrum of the responses received in the public consultation, ranging from 0-20 (too low) to 81-100 (too high). As demonstrated in the above graph, most respondents considered States' Members' remuneration to be too high. However, there was also a substantial number of respondents who considered its current level to be about right. There were very few respondents who considered remuneration to be too low.

2. Do you believe the current application of remuneration reflects fairly on the levels of political accountability and responsibility that attach to various positions?



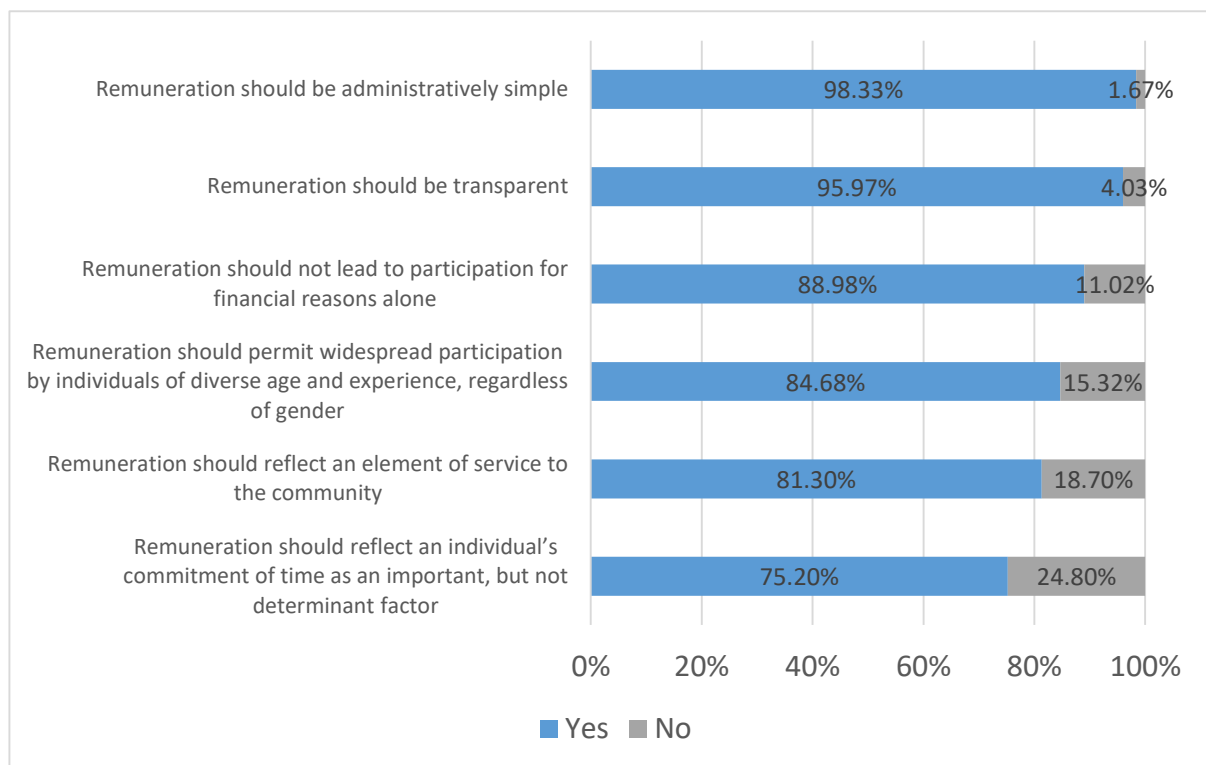
As can be seen in the above graph, the responses to this question were largely similar across the various roles undertaken by States' Members. While there was slightly more support for the remuneration of Presidents of Principal Committees and the President of the Policy & Resources Committee, over half of respondents thought that remuneration did not fairly reflect the political accountability and responsibility of States' Members in all cases.

3. Do you believe that annual adjustments to remuneration should continue to be linked to the percentage movement in average median earnings?



The public were somewhat split on whether remuneration should continue to be adjusted annually in line with the percentage movement in average median earnings.

4. Do you believe the six principles remain appropriate to guide the Review?



There was resounding support for the six main principles from the public, with nearly all of the main principles receiving support from over 80% of respondents.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

REQUÊTE

PENSION RULES AND REGULATIONS RELATING TO WOMEN WHO WERE MARRIED AS AT 31
DECEMBER 2003 AND HAVE SUBSEQUENTLY BEEN WIDOWED AND REMARRIED A PERSON
WITH NO GUERNSEY PENSION ENTITLEMENT

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation SHEWETH
THAT:

1. It is accepted that the States' policy (implemented in 2004) of ensuring equality of entitlement to basic social insurance benefits, including state pension, remains valid and is correct and that policy is supported by your Petitioners. However, your Petitioners believe that the effect of the arrangements relating to entitlement to a state pension for women pensioners who were married at the time that the policy was implemented and have since been widowed and then remarried is, in some instances, unfair and an unnecessary cause of hardship.
2. At their meeting on 30th April 2003 the States took a number of decisions intended to ensure equality between men and women, as far as possible, in relation to social insurance benefit entitlement¹. Amongst those decisions were Resolutions that as from 1 January 2004 all women should be assessed to pay social insurance contributions at full percentage rates and that a married woman's pension, based on her husband's contribution record should cease. It was also accepted that there would need to be transitional arrangements.
3. One transitional arrangement was to permit a qualifying married woman (i.e. one who was married to a contributing husband as at 31 December 2003), in the event that her husband died before she was of pensionable age, to benefit from her deceased husband's contributions. This benefit was the right to elect, on or after reaching pensionable age, to substitute their deceased husband's pension average, calculated at the end of the marriage, for their own pension record either for the period of the marriage only, or for the whole of their pension average period.
4. That arrangement is not available where a qualifying married woman, whose husband has died on or after 1 January 2004, has remarried a person with no Guernsey pension entitlement. In those instances the woman concerned may not elect to substitute the entitlement of their deceased first husband even though they have no additional pension benefit whatsoever accruing from their re-marriage.

¹ See Billet d'État No. V of 2003 dated 28th March 2003..

5. In practice there are very few instances in which the circumstances described above arise. For example, your Petitioners are told that on average perhaps 1 case arises every 5 years and that the additional amount of pension benefit accruing in the context of total pensions payable from the social insurance fund is negligible.
6. In all the circumstances your Petitioners believe the application of the social insurance pension rules and regulations in the case described above to be particularly unfair. They believe that there should be an exception enabling a qualifying married woman, whose husband died on or after 1 January 2004 and who has remarried someone with no Guernsey pension entitlement, to make the election described in paragraph 3 above.

THESE PREMISES CONSIDERED, YOUR PETITIONERS humbly pray that the States may be pleased to resolve:

To direct the Committee *for* Employment & Social Security to adopt and implement a policy which will ensure that a woman -

- (a) who was as at 31 December 2003 married to a contributing man under the Social Insurance (Guernsey) Law, 1978, and
- (b) who has following the death of that man remarried a person who has no Guernsey pension entitlement,

may elect on or after reaching pensionable age to substitute their deceased husband's pension average, calculated at the end of the marriage, for their own pension record either for the period of the marriage only, or for the whole of their pension average period.

AND YOUR PETITIONERS WILL EVER PRAY
GUERNSEY

This th12 day of June 2019

SIGNED BY:

Peter Ferbrache, Barry Paint, Andrea Dudley-Owen, Robert Prow,
Stephen Roberts, Joe Mooney, Jan Kuttelwascher

The original signed copy of this Requete is held at the Greffe

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

APPENDIX REPORT – DEBATE

GUERNSEY PRISON – ANNUAL REPORT 2018

Pursuant to Rule 20(5) of the Rules of Procedure of the States of Deliberation and their Committees, the States are asked to decide:-

Whether, after consideration of ‘Guernsey Prison – Annual Report 2018’, they are of opinion:-

1. To take note of the Report.

GUERNSEY PRISON

Annual Report 2018

VISION

We ensure public protection and commit to reduce re-offending

MISSION

We provide a safe and secure environment that enables prisoners to address the causes of offending behaviour and provide them with values, skills and experience to take a positive role in the community upon release

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GOVERNORS FOREWORD

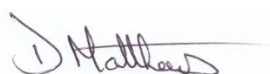
I am pleased to report another successful year over the course of 2018. The majority of priorities identified in the 2018 delivery plan have been achieved. I am particularly pleased with the installation of in cell computers, the successful completion of Skyfence and the installation of a new cell call system. Priorities that were not met, mainly due to insufficient capital funding have, in the main, been carried forward to 2019.

After 5 years of relatively low prison numbers, 2018 saw an increase in the prison roll during the last quarter of the year; the roll reached 120 in December. This caused some concern that the prison would run out of available space if the trend had continued. Trying to predict the prison roll is very difficult and is a matter which is continually monitored.

I was very pleased to see a significant increase in the numbers of qualifications and awards obtained by prisoners; increases were seen in academic and vocational awards. In addition, the CLIP Charity goes from strength to strength. The new workshop facility, which is partially funded by the Charity, will provide a better range of activities and be able to accommodate a more diverse range of prisoners than the current provision.

I welcome the introduction of the Community Reintegration Support Officer. This post was created in May 2018 to increase supervision of prisoners on Stage 1 of the Release on Temporary Licence (ROTL) Progression System. The post can supervise groups of up to 6 prisoners working within the prison grounds (but outside of the perimeter fence). This allows prisoners to be tested in open conditions, and before commencing work placements in the community.

With the increase in the prison roll there was a subsequent increase in adjudications and violence within the prison. This is being monitored closely, the prison has a zero tolerance approach to violence and, as a result, we always prosecute offenders.



David Matthews
Prison Governor

Introduction

Guernsey Prison has a Certified Normal Accommodation (CNA) of 134. Each cell used for the confinement of prisoners has sufficient heating, lighting and ventilation and is of adequate size for the number of prisoners it is approved for. Each cell must provide prisoners with a cell call system or other effective means of communication with staff.

The CNA represents the good, decent standard of accommodation that the Service aspires to provide all prisoners.

The budget for the Prison for 2018 was set at £5,459,000. The cost per prisoner during 2018, based on the CNA, was £41,992. The average prison roll over the year was 100.

The Prison currently employs 75 uniformed staff and 13 civilian staff. There are also a range of volunteers, tutors and multi-agency staff working at the Prison.

1. Progress against Business Planning Priorities set for 2018

1.1 Skyfence Drone Defence

Skyfence is a drone defence system which is activated by a series of detectors, tuned to identify drones in the proximity of the prison.

Outcome

The UK has extended to Guernsey the Prisons Act, 2012 (amended), which permits the interference with wireless telegraphy inside the prison. Skyfence has now been tested, commissioned and is working as it should, with no issues reported.

1.2 Prisoner Alarm System Cell calls

The longstanding issues the Prison had with the inoperable Prisoner Cell Call System needed to be addressed. The old operating system was no longer supported by the original provider and as such, could not be integrated into the new security systems.

Outcome

Installation of a new updated prisoner alarm system commenced in 2018. This will replace the current system and offers the benefits of variable alarm features, including historical event recording, with all system activity logged. The finalisation of the system will be completed in April 2019.

1.3 In-Cell Terminals

When the Prison installed in-cell telephones in 2014, Cat 5 cabling was also installed to allow for the provision of in-cell computer terminals at a later date. During 2017, further network and cabling works were completed in conjunction with the new education provision to allow for the installation of terminals in all cells. Final technological upgrades were completed in early 2018, and installation of in-cell terminals began in the final quarter.

Outcome

All prisoners now have access to an in-cell terminal and applications are being commissioned on a rolling programme. The terminals give prisoners the responsibility to manage aspects of prison life which would normally be carried out by staff, as well as allowing them to continue with education work in their cells; thereby achieving increased autonomy. Prisoners are allowed to access supervised Internet provision within the Education Facility, but not from their in-cell terminals.

1.4 EU General Data Protection Regulation (GDPR)

Guernsey introduced new Data Protection legislation in order to maintain adequacy and ensure continued access to the EU market; considered vital to the economy of the Island.

Outcome

Consequently, the Prison has ensured that its practices are all relevant to the Data Protection Law, 2017. During 2018, a comprehensive data audit was initiated in order to review the collection, organisation, adaption and alteration, recording, erasure or destruction and disclosure of data.

1.5 Prison Care Team

The Prison Care Team is made up of a cross section of staff who have the skills to offer peer support and confidential listening to any member of staff who wishes to speak about a problem or incident that may have occurred in or out of work.

Outcome

Guernsey Prison now provides a dedicated staff Care Team that aims to offer discreet and confidential support to any member of staff. The Prison is looking to further embed the work of the Care Team across the establishment and develop this provision as part of a wider Mental Health and Wellbeing Strategy.

1.6 Prisoner Induction

The Prison has a responsibility to ensure that prisoners are promptly inducted and supported to understand life in prison. During 2018 the Prison established a steering group who took forward the work involved in moving to core day induction delivery.

Outcome

Team around the Prisoner (TAP)

A new induction procedure was established, incorporating early days in custody expectations and prison orientation. Within 48 hours of the prisoner coming into custody the TAP meeting is held with the prisoner's involvement to identify requirements at that early stage.

1.7 Creative Learning in Prison (CLIP) Community Workshop

CLIP works directly with prisoners within Guernsey Prison, delivering creative activities that are meaningful and productive. Prisoners gain appropriate qualifications to enable employment whilst also being engaged in projects that are of direct benefit to the community within a structured regime.

A proposal was submitted in 2018 to construct a Community Workshop on the Prison grounds; with the aim of allowing CLIP to take on larger and more ambitious projects, thereby generating additional income and facilitating CLIP's stated aim of becoming a fully self-funding and sustainable charity. The workshop will accommodate up to 16 prisoners working and learning daily under tutored supervision by Prison Officers; working on projects of direct benefit to the community.

Outcome

Necessary funds were raised by CLIP, with the exception of the ground works which have been approved as a capital bid. The design was agreed, with the plan being to construct an 11m x 11m steel portal frame industrial building, clad in insulated metal panels on a reinforced concrete base. 2018 has also seen planning permission and building regulation approval being secured, and a contractor appointed.

1.8 Creative Learning in Prison Outlet & Showroom

The official opening of the CLIP Showroom took place in March 2018.

Outcome

This Outlet acts as a shop front for the general public to purchase / order both the products made in the workshop and those from elsewhere within the prison, for example surplus fruit and vegetables from the Horticulture Site, and arts and crafts produced in Education classes.



Further information can be found at <https://www.facebook.com/CLIP-Guernsey> or by emailing creativelearninginprison@gmail.com

1.9 Her Majesty's Inspectorate of Prisons

The Prison began preparing for a full inspection by Her Majesty's Inspectorate of Prisons, with the view to this commencing in the summer of 2019.

Outcome

This has now been postponed, potentially until 2020, subject to funding.

2 Maintenance Priorities

During 2018, the Prison intended to upgrade its facilities in relation to the following:

2.1 Upgrade Shower Facilities and Improvement of Disabled Facilities

The showers on the 44-cell wing are in urgent need of repair as the water is not draining away, causing Health and Safety concerns. This extends to the disabled shower which has not been fit for purpose for many years. A Minor Capital Bid was submitted with the aim of beginning work in 2018.

Outcome

The upgrade has been delayed to 2019 to enable Phase One and Two of the project to be undertaken together. The plans are currently with States Property Services. A new Minor Capital Bid will be submitted in 2019.

2.2 Repair and repaint external finishes on buildings

The repair and repaint of external finishes on Prison buildings are becoming an urgent priority due to the level of disrepair.

Outcome

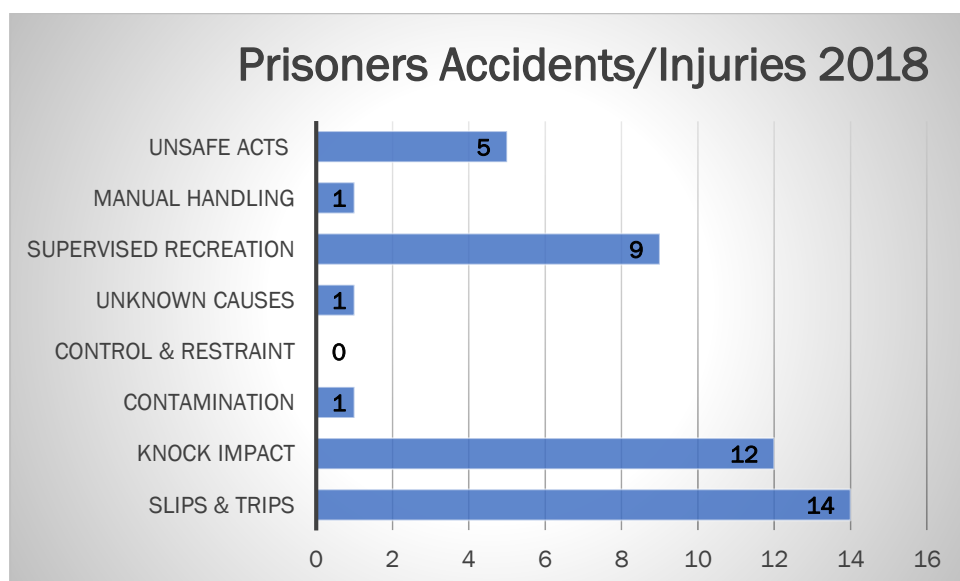
This project had been listed and approved by backlog maintenance previously and procurement procedures have been followed. The allocated funding was withdrawn as a result of a review and are no longer available. As a consequence, the business case needs to be resubmitted in 2019 for consideration by the Minor Capital allocation team at Property Services.

3 Departmental Reports

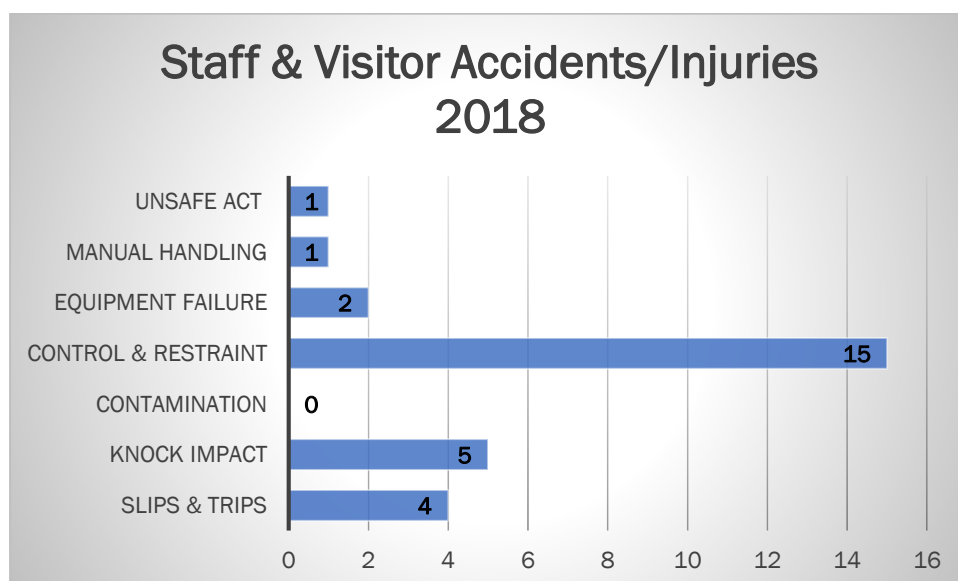
3.1 Health and Safety

It has been noted for the second year running that the reporting of accidents and injuries within the Prison has been excellent. All new officers are required to complete the Scottish Vocational Qualification (SVQ) Level 3 in Custodial Care which includes a module on Health and Safety in the workplace. The rise in awareness amongst staff has reduced the level of accidents in the Prison. In addition, the adherence to States of Guernsey safety initiatives has also contributed to the lowest staff injury figures since statistics were recorded.

3.1.1 Prisoners Injuries 2018



3.1.2 Officer Injuries 2018



3.2 Safer Custody

3.2.1 Assessment Care in Custody and Teamwork (ACCT)

Prisoners at risk of self-harm or suicide are managed through a process known as Assessment Care in Custody and Teamwork (ACCT). 70 ACCTs were opened in 2018 for prisoners whom were considered at risk. Out of the 70 ACCTs opened; 19 of those were for incidents of actual self-harm.

3.2.2 Female Prisoners

During 2018, a total of 14 female prisoners were received into custody. This is a slight rise in comparison to previous years.

3.2.3 Juvenile Prisoners

The prison accommodates juvenile prisoners, aged between 15 and 18, on its purpose-built wing named "Compass". The Compass Unit is located within the Prison but situated outside the main population accommodation areas. The wing benefits from dedicated, specifically-trained staff and an adapted regime to cater for younger prisoners.

During 2018, the Compass wing had 2 children located in the unit, with a combined total of 312 days.

3.2.4 Vulnerable Prisoners

The Vulnerable Prisoner population is made up of predominately sex offenders and now represents 25% of the total population. Vulnerable Prisoners are located on 4 separate wings. There is limited integration during work and education, subject to risk assessment by the Activity Allocation Board.

3.2.5 Separation, care and progression unit (SCAPU)

The Prison SCAPU is used primarily to segregate prisoners who are considered to be a risk to the good order and discipline of the establishment due to refractory or non-compliant behaviour.

The SCAPU has been used by 17 prisoners on 25 occasions throughout 2018.

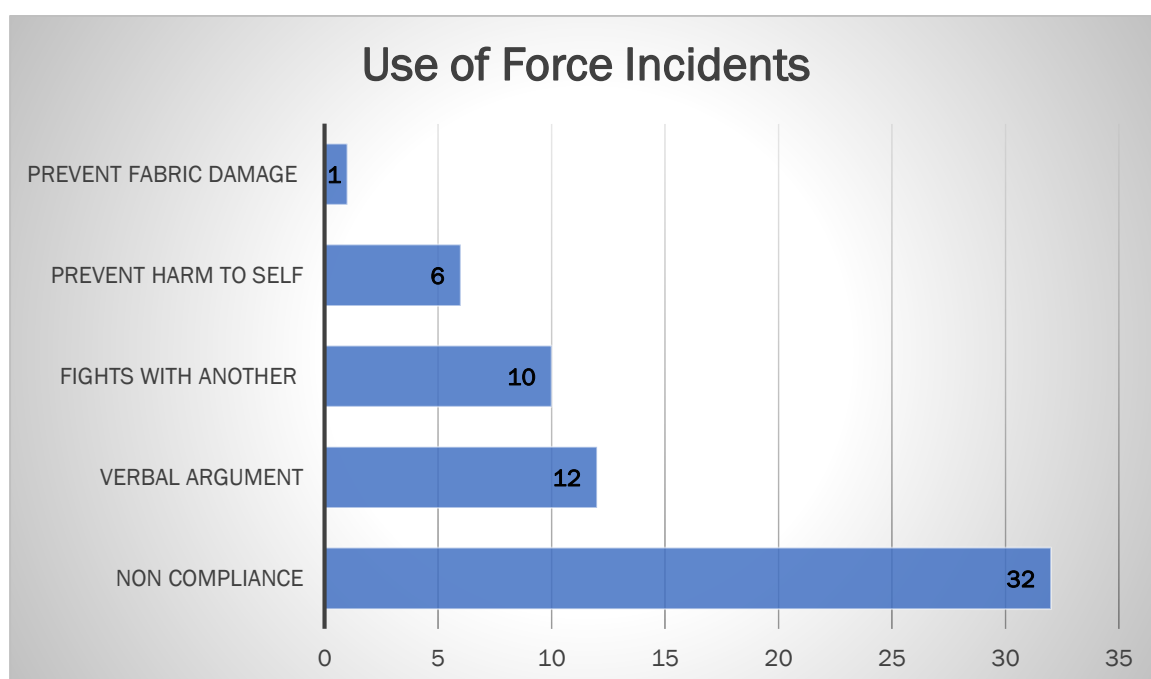
3.2.6 Assaults

During 2018, there were a total of 7 judgments against prisoners for the offence of: Commits any assault. 4 of those assaults were against another prisoner and 3 assaults by prisoners against staff.

3.2.7 Use of Force

During 2018, there were a total of 61 incidents requiring use of force reports to be completed. Of these, 12 were planned removals with a general theme of prisoners being relocated to the Prison SCAPU. The remaining incidents were spontaneous interventions, commonly due to non-compliance, but also for preventing self-harm and altercations between prisoners.

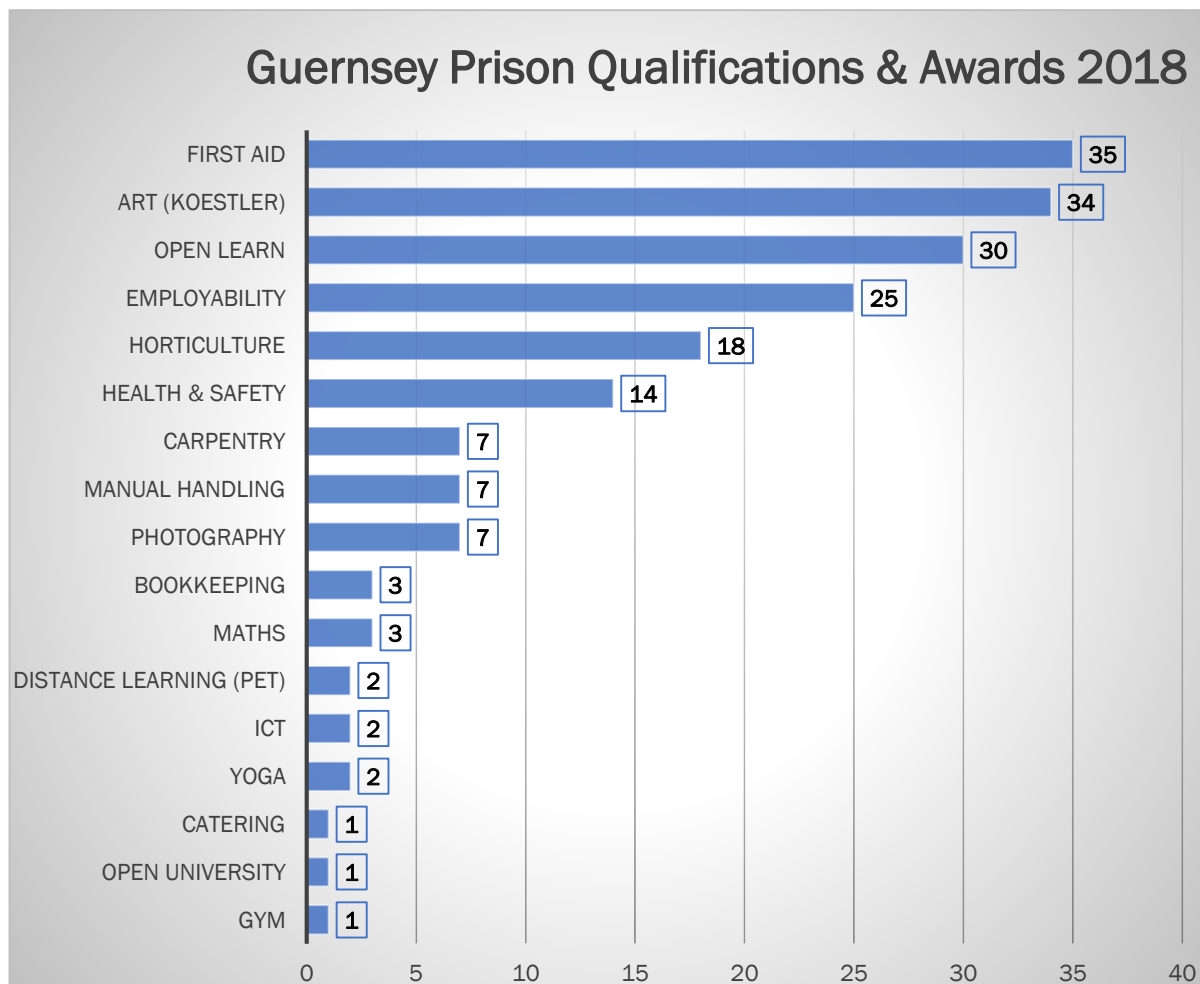
A breakdown of all incidents is listed in the table below:



3.3 Learning, Skills and Regimes

From 2017 to 2018, the percentage of prisoners engaged in Education increased from 75% to over 80%. In addition, an approximate increase of 20% was seen in the number of prisoners gaining accredited learning outcomes.

The chart below demonstrates the breakdown of qualifications/awards achieved:



A total of 92 students achieved 162 qualifications/awards in 2018, compared to the 77 students who achieved 132 qualifications/awards in 2017. The most popular courses continue to be those which are vocationally relevant such as First Aid, Horticulture and Employability Skills. However, the Learning and Skills department prides itself in offering a wide spectrum of educational opportunities including academic studies for those who want them. This year, 3 GCSE qualifications were gained and one individual completed 2 modules of an Open University Degree.

The Prison is fortunate to have support in running the Prison Library from the Guilles-Alles' (GA) Community Librarian. In conjunction with GA, the Shannon Trust's peer education reading scheme (*'Turning Pages'*) was introduced into Guernsey Prison, with prisoners having been trained as mentors and a number of individuals taking up the offer of regular support over the past year. In 2018, the Prison also saw its first student to complete the "Turning Pages" reading programme.

New City and Guilds Courses in Employability and Carpentry were introduced in 2018; with 25 individuals successfully completing the Employability Course, and 7 individuals gaining awards in Carpentry. Furthermore, since August 2018, 5 students completed 30 of the new Open University “Open Learn” Courses, mainly facilitated through the use of in-cell computers.

Additionally, in 2018, the Prison received its best ever Koestler results. 27 individuals were involved in showcasing their artistry and in recognition of their talent, 17 awards were won, including 2 Gold Awards. This achievement was notable considering the 7500-plus entries submitted from across the UK. Art work was displayed in an exhibition at Southbank Centre’s Royal Festival Hall.

Additional courses for minority population groups were facilitated in 2018, including Caritas classes for Vulnerable Prisoners and a Mural project for Females. Increased one-to-one support has also been provided.

Several new tutors have joined the Education Team, covering subjects such as Art, Drama, Cookery for Employability, the Prison Magazine and Caritas cookery classes for Vulnerable Prisoners.

Guernsey Prison is proud to be a working prison, where the expectation is that prisoners who are able, will be assigned jobs and expected to go to work each day. An average of more than 99% of all eligible prisoners were in employment during 2018.

3.3.1 Catering

In order to work in the Prison Kitchen, prisoners must undertake a Level 2 Food Hygiene course. Once working in the Kitchen, they can then take a City & Guilds Level 1 NVQ in Hospitality (Food Preparation and Cooking).

3.4 Staff Learning and Development

Within Staff Learning and Development, the Prison remains committed to ensuring staff receive relevant and timely training which equips and invests in them as practitioners. Annual training in Fire, First Aid, Safeguarding and Use of Force ensures staff are best equipped to deal dynamically with incidents as they arise and contributes to the overall safety of the Prison.

During 2018, one Prison Officer Entry Level Training (POELT) Course was facilitated, training a total of 5 new officers. The Scottish Vocational Qualification in Custodial Care Level 3 continues to be delivered and there were a total of 3 candidate profiles completed in the course of the year. In addition, 4 individuals completed the Management Development Programme for Senior Officers.

3.5 Offender Management Unit

3.5.1 Community Reintegration Support Officer

This part-time post was created in May 2018; the primary responsibility being to supervise the prisoners on Stage 1 of the ROTL Progression System, “Redband” Duties. The post can supervise groups of up to 6 prisoners undertaking gardening and maintenance tasks within the prison grounds (but outside of the perimeter fence). The aim is to encourage a strong work ethic, motivation, ability to take responsibility and work both independently and as part of a team. Additionally, the Support Officer works alongside the Resettlement Officer in transitioning prisoners into appropriate voluntary work placements in the community. The Resettlement Officer is able to conduct site visits for support and monitoring purposes.

3.5.2 EMDR (Eye Movement, Desensitisation and Reprocessing)

In the last year, we have been able to offer EMDR through the Pathways Department as a treatment option for prisoners who have experienced trauma in their childhood or adult life. Some prisoners have found it difficult to move on with their recovery from substance misuse or to engage fully with offence related work because of untreated trauma related anxiety disorders. When a person is very upset, they cannot process information as they do ordinarily. Traumatic memory has a lasting negative effect on the way that the brain processes information.

EMDR is a complex method of psychotherapy which integrates many of the successful elements of a range of therapeutic approaches and combines them with eye movements or other forms of bilateral stimulation in ways that stimulate the brain’s information processing system. EMDR is a set of standardised protocols that have been extensively researched and proven effective.

3.5.3 Substance Misuse Service

In addition to the existing substance misuse work provision in the prison, Cognitive Behavioural Therapy (CBT) was introduced as a method of working by Drug Concern in 2018. CBT can be beneficial in addressing underlying issues linked to substance misuse such as depression and anxiety disorders.

3.6 Healthcare Report

3.6.1 Service Provision and Development

2018 continued to be a challenge to meet all prisoner expectations of healthcare delivery.

The nursing team provided primary care services equitable to those in the community for the extended hours of 12.25 hours per weekday and 8 hours on both weekend days, which enabled the administration of evening medication at a later time of 1845 hours, 4 days a week.

Nurse-led clinics continued to be provided daily and include: immunisation provision, well man/well women; weekly stop smoking sessions; sexual health screening, nurse ‘triage’; chronic disease management; detoxification; mental health; admission and pre-release assessments.

All newly sentenced prisoners returning from Court continue to be risk assessed by a Registered Nurse in Prison Healthcare.

The HSC Consultant Psychiatrist, CPNs and Psychologists from the HSC Psychological Therapy Team and the Learning Disability Team provided in-reach services as required, following referral and assessment by the Duty Intervention Team. Guernsey Bereavement Service provided in-reach counselling as requested throughout the year.

The Prison Dentist continued bi-weekly surgeries throughout the year, however, these were increased to weekly during December in an attempt to treat urgent cases which arose through the increase in prisoners in the final quarter of the year.

Optician clinics continued as required within the Prison.

Healthcare continued to teach prisoners in the use of Prenoxad pre-release, in an attempt to reduce the risk of opioid-related overdoses and deaths post-release.

3.6.2 NMC (Nurses and midwife Council) Revalidation

One nurse revalidated in 2018. Peer supervision and case discussions continued ad hoc.

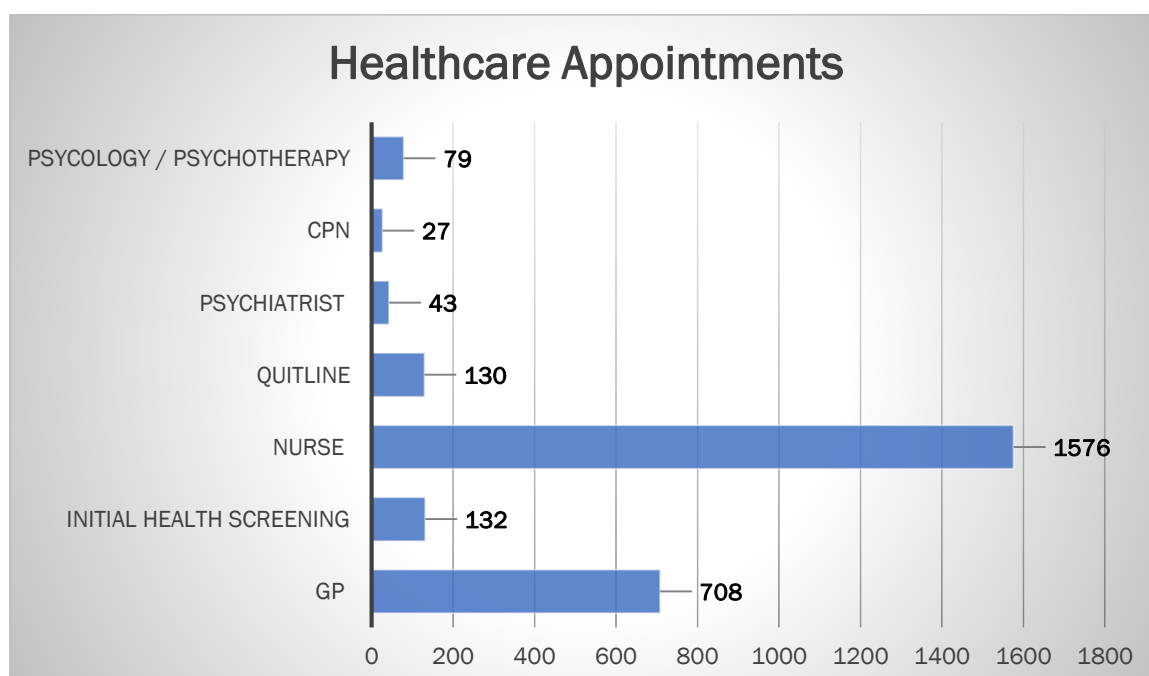
3.6.3 Quality assurance

10 complaints related to healthcare delivery were raised by prisoners during 2018 and were resolved, with a formal written response going to each prisoner.

All clinical notes remain paper based although there are plans in 2019 to purchase an appropriate database to maintain and manage patient information.

3.6.4 Statistics

The table below breaks down the 2695 prisoner appointments which were attended within the Healthcare Department:



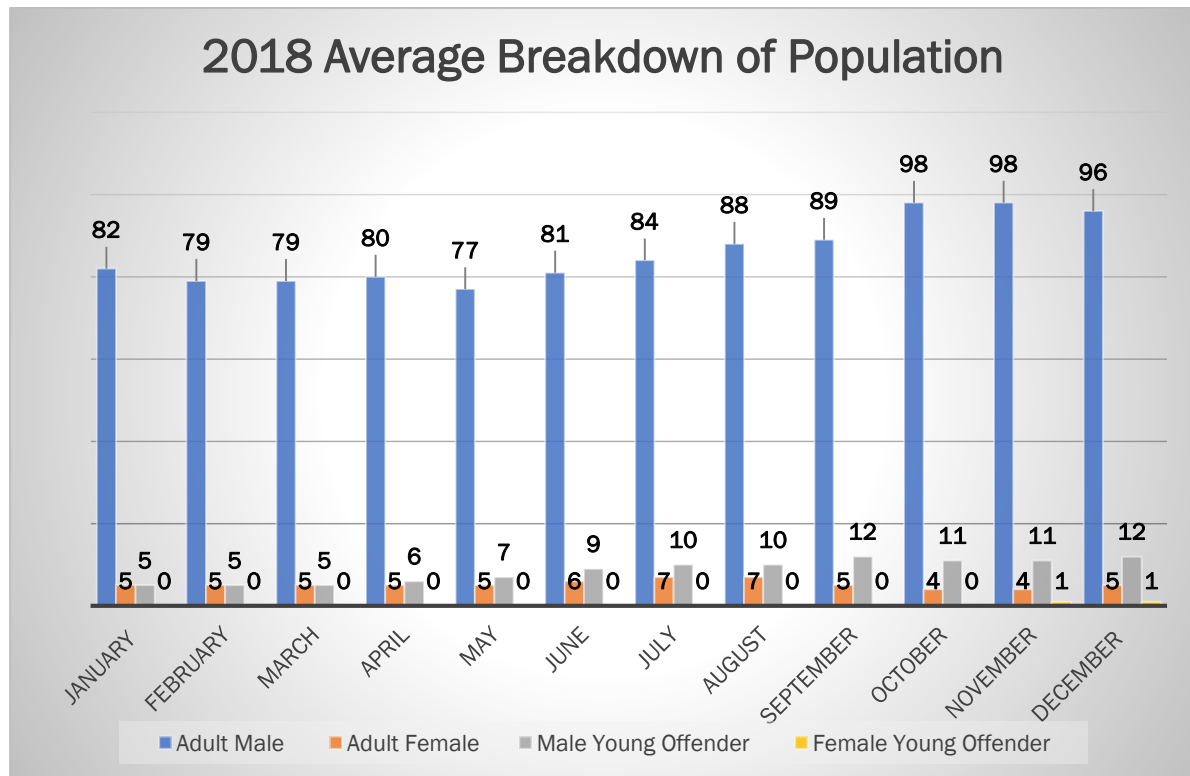
Prisoners' ages ranged from 15yrs to 79yrs.

4 Prison Population

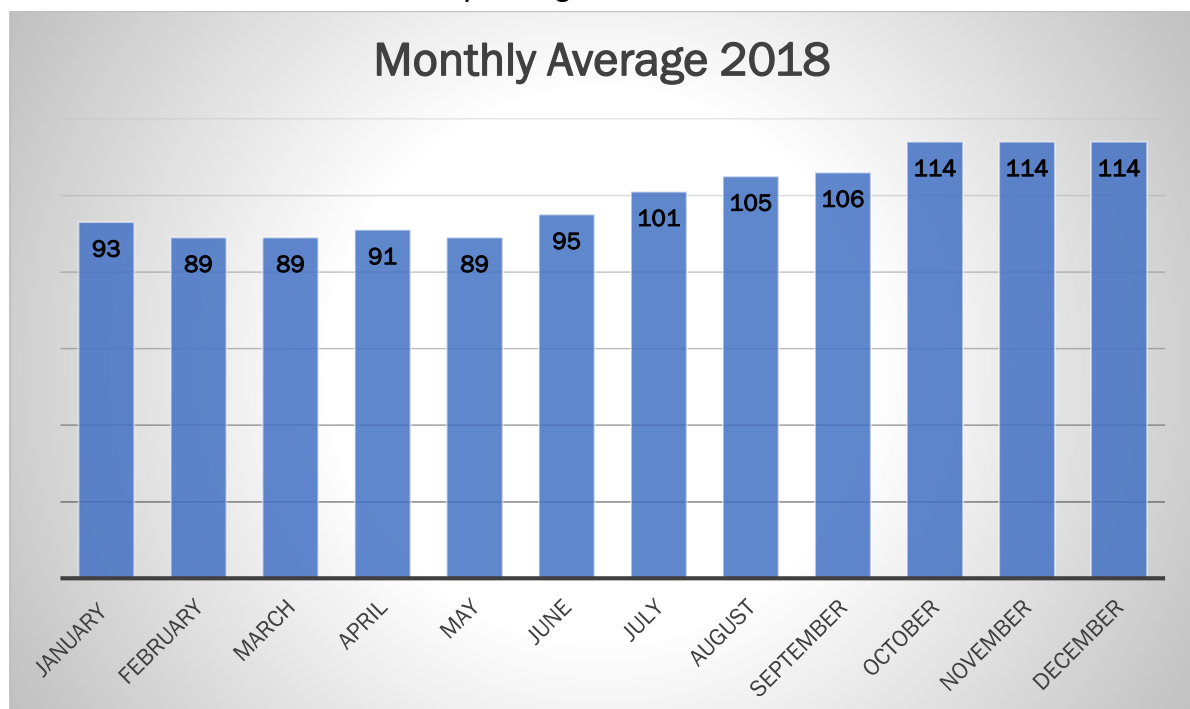
The annual average figure for 2018 was 100 prisoners, with the highest number reaching 121 and the lowest being 85.

4.1.1 Breakdown of Prison Population

During 2018, the average breakdown of the population was seen to increase as the year progressed. As the graph below shows, male adults were the majority of the population.



The chart below shows the monthly average:



5 Deaths

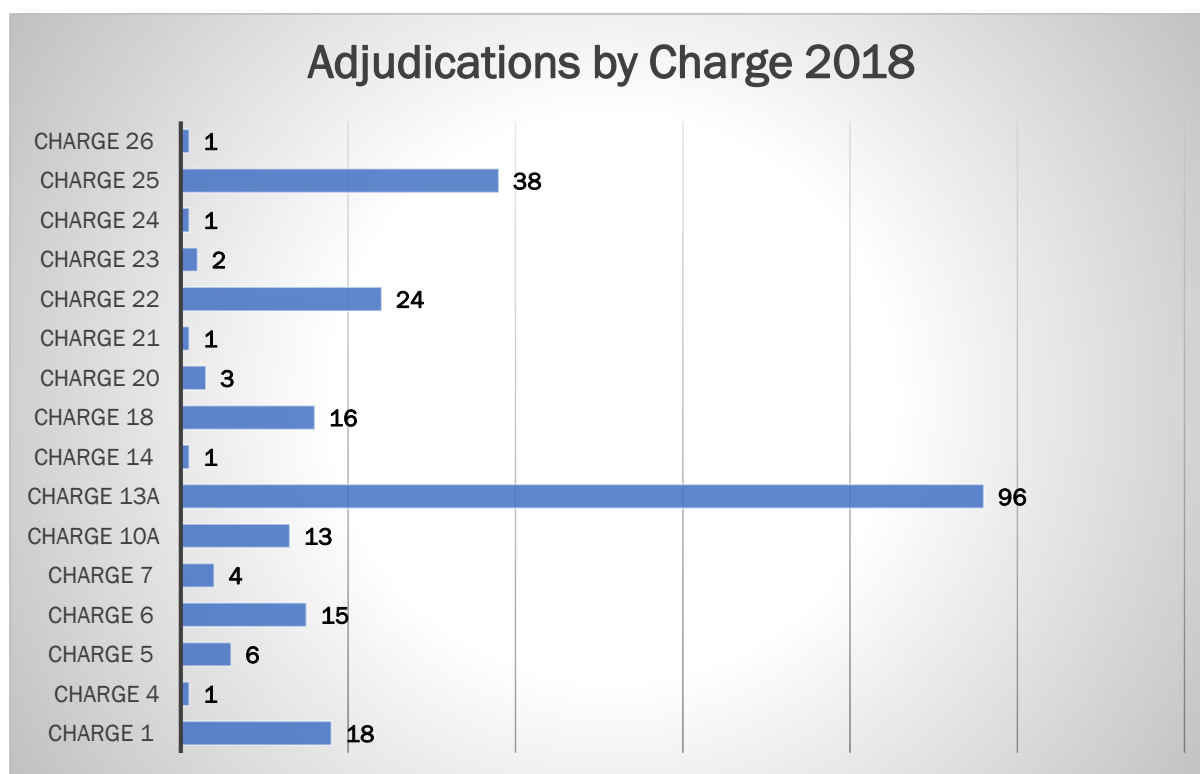
There have been no recorded deaths in custody during 2018. The Prison continues to carry out vigorous assessments and takes action accordingly with regards to the risk of suicide and self-harm.

6 Escapes

There have been no recorded escapes from custody and public protection remains a priority for the Prison.

7 Adjudications

Over the course of 2018, there were a total of 240 offences against discipline committed by a total of 62 prisoners.



Of the 240 offences, 7 were referred to the Independent Adjudicator for serious offences. 161 adjudications were awarded, 52 dismissed, 26 were not proceeded with and 1 was referred to the police. No adjudications were overturned.

The highest level of offences was 96 charges for: has in the prisoner's possession –

- (a) anything which the prisoner is not lawfully required or authorised to possess

The penalties for these charges range from cautions to loss of remission, dependent on the items in possession.

The second highest level of offences committed in 2018 was for: disobeys any lawful order.

A full breakdown of offences can be found in Appendix A.

7.1.1 Appeals

There is an appeal process for prisoners against any finding of guilt or punishment awarded. There were no appeals during 2018 against any of the awards set. In general, the adjudication will not be proceeded with if technical errors are found within the process.

8 Key Performance Targets

The Guernsey Prison Service is fully committed to monitoring its performance and ensuring that its managers have access to the information they require to judge effectiveness and make informed decisions against the following objectives;

Safety: Prisoners, particularly the most vulnerable, are held safely.

Respect: Prisoners are treated with respect for their human dignity.

Purposeful Activity: Prisoners are able, and expected, to engage in activity that is likely to benefit them.

Rehabilitation and Release planning: Prisoners are supported to maintain and develop relationships with their family and friends. Prisoners are helped to reduce their likelihood of reoffending and their risk of harm is managed effectively. Prisoners are prepared for their release into the community.

A new set of improvement objectives have been set for 2019; please see the 2019 Delivery Plan.

Appendix A

Offences against discipline

- (1) commits any assault,
- (2) commits any racially aggravated assault,
- (3) detains any person against the person's will,
- (4) denies access to any part of the prison to any authorised person or visitor,
- (5) fights with any person,
- (6) intentionally endangers the health or personal safety of others or, by the prisoner's conduct, is reckless as to whether such health or personal safety is endangered,
- (7) intentionally obstructs any authorised person in the execution of the person's duty or the performance of the person's work,
- (8) escapes or absconds from prison or from the legal custody of the Governor,
- (9) fails to comply with any condition of a temporary release licence upon which the prisoner is or was temporarily released,
- (10) is found with any substance in the prisoner's urine or breath, or other bodily matter or substance taken as a sample from the prisoner, which demonstrates that –
 - (a) a controlled drug has been administered to the prisoner by that prisoner or by another person, whether in the prison or outside whilst that prisoner is on a temporary release licence (but subject to paragraph 2),
 - (b) a medicinal product has been administered to the prisoner by that prisoner or by another person, in the prison (but subject to paragraph 2), or
 - (c) the prisoner has smoked a tobacco product or any other thing at any time whilst in the prison,
- (11) is intoxicated as a consequence of consuming any intoxicating liquor (but subject to paragraph 3),
- (12) consumes any intoxicating liquor, whether or not provided to the prisoner by another person (but subject to paragraph 3),
- (13) has in the prisoner's possession –
 - (a) any thing which the prisoner is not lawfully required or authorised to possess, or
 - (b) a quantity of any thing that is greater than the quantity that that prisoner is lawfully required or authorised to possess,

- (14) supplies to any person any prohibited thing,
- (15) supplies to any person any thing which the prisoner is lawfully required or authorised to have for that prisoner's own use, unless that supply is lawfully required or authorised,
- (16) takes improperly any thing belonging to another person, the prison or the Department,
- (17) intentionally or recklessly sets fire to any part of the prison or any other property, whether or not the prisoner's own,
- (18) destroys or damages any part of the prison or any property (other than the prisoner's own),
- (19) causes racially aggravated damage to, or destruction of, any part of the prison or any other property, other than the prisoner's own,
- (20) absents the prisoner's self from any place where the prisoner is required to be, or is present at any place where the prisoner is not lawfully required or authorised to be,
- (21) is disrespectful to any authorised person or any visitor (other than a prisoner),
- (22) uses threatening, abusive or insulting words or behaviour,
- (23) uses threatening, abusive or insulting racist words or behaviour,
- (24) intentionally fails to work properly or, being required to work, refuses to do so,
- (25) disobeys any lawful order,
- (26) disobeys or fails to comply with any provision of this Ordinance, the Prison Regulations or the Prison Orders that applies to the prisoner,
- (27) receives any controlled drug, or, without the consent of an authorised officer, any other thing, during the course of a visit,
- (28) displays, attaches or draws on any part of a prison, or on any other property, threatening, abusive or insulting racist words, drawings, symbols or other material,
- (29) smokes a tobacco product or any other thing, or
- (30) (a) attempts to commit, (b) incites another prisoner to commit, or (c) assists another prisoner to commit or to attempt to commit, any of the foregoing disciplinary offences.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

APPENDIX REPORT – DEBATE

GUERNSEY PRISON – INDEPENDENT MONITORING PANEL – 2018 ANNUAL REPORT

Pursuant to Rule 20(5) of the Rules of Procedure of the States of Deliberation and their Committees, the States are asked to decide:-

Whether, after consideration of 'Guernsey Prison – Independent Monitoring Panel – Annual Report 2018', they are of opinion:-

1. To take note of the Report.

Guernsey Prison

INDEPENDENT MONITORING PANEL



2018 ANNUAL REPORT

Publication date: May 2019

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If further information is required in relation to any matter contained within this Report please write to the Chairman of Independent Monitoring Panel c/o Sir Charles Frossard House, La Charroterie, St Peter Port, GY1 1FH or telephone 01481 717000.

EXECUTIVE SUMMARY BY THE CHAIRMAN

I am pleased to present my first annual report as Chairman of the Independent Monitoring Panel. As my predecessors have done I too would like to acknowledge my fellow Panel members, who are tenacious in following up and, where possible, resolving issues; they are a group of ordinary people doing an extraordinary job.

The prison continues to be an institution that the island can be proud of. It treats its charges humanely and with respect while encouraging them to improve their lives and integrate back into the community in a meaningful way. This year there have been a number of positive developments at the Prison but there are also some concerns we believe need addressing. We deal with these more fully in the section 'Panel's Observations.'

Positive developments include:

- Introduction of in-cell terminals
- Improvement of prisoner induction procedures
- Introduction of anti-drone technology known as Skyfence
- The establishment of a Community Workshop
- The development of a new running track
- Regime re-profiling exercise
- Proposals for 'virtual' visits'

Among our concerns are:

- Various Healthcare issues
- Lack of progress on J Wing refurbishment
- Drugs, 'hooch' and de-toxing
- Access to bank accounts for ex-offenders
- Increasing prison population
- Limited awareness among prisoners of the role of the IMP

We are, as always, indebted to the staff at the Guernsey Prison - especially to those prison officers who accompany members throughout their visits. I take this opportunity to thank them all for their professionalism, courtesy, patience and good humour on our visits.

Tony Talmage

STATUTORY FUNCTION

The Guernsey Prison Service keeps in custody those legally committed to its care. Its duty is to look after them with decency and to help them lead law-abiding lives in custody and after release. The Prison holds a diverse population, including those sentenced and on remand, men and women, young offenders and juvenile and vulnerable prisoners.

The Independent Monitoring Panel is constituted under the Prison (Guernsey) Ordinance 2013 (“the Ordinance”) as a body made up of members of the public. It is charged with providing independent oversight of the day-to-day operations of the Prison and prison conditions, monitoring the administration of the prison, the treatment of prisoners and whether the statutory objectives of the prison system are being met. The Panel also oversees the general well-being of staff who are employed by the Guernsey Prison.

To enable the Panel to carry out these duties effectively, its members have right of access to every prisoner and every part of the prison and also to the prison’s records. Members:

- undertake a monthly unannounced visit of the Prison premises;
- visit prisoners personally at their request;
- visit prisoners who have been admitted to the Segregation Care and Progress Unit (SCAPU);
- attend as observers at routine prison meetings; and
- attend bi-monthly Panel meetings.

The Ordinance requires the Panel to prepare an annual report at the end of each calendar year, which must include its findings, observations, recommendations and statistical information.

THE PANEL'S OBSERVATIONS in 2018

As the section above makes clear the function of the Independent Monitoring Panel is to provide independent oversight of the day-to-day operation of Guernsey Prison. Our role is to ensure that proper standards of care, decency and respect are maintained and to raise any concerns we might have. The following report arises from observations made on unannounced visits, visits requested by prisoners, informed contact with staff, attendance at prison meetings and discussions with prison management.

POSITIVE DEVELOPMENTS

In-cell terminals

These terminals have now been installed and are the subject of continual development. They have a dual function - providing prisoners with the ability to pursue their education as well as manage areas of prison life normally carried out by staff such as visits booking, applications, complaints and menu choices. The system will also hold a library of communication notices and prison rules. We believe this is a major step forward in ensuring prisoners have access to information when they need it and are able to take ownership of their learning and rehabilitation.

Improvement of prisoner induction procedures

The significant amount of information imparted to prisoners on induction was one of the concerns raised in our 2017 report. At that time we felt that the induction process made it almost impossible for new prisoners to retain essential information – not least the role of the IMP. We are therefore pleased to report that a 'Team around the Prisoner' (TAP) scheme is being introduced so that each new arrival will have an individual meeting with various professionals, within 48 hours of reception, to ensure all their needs are met and that they receive essential information. We note that information about the role of the IMP is available on the in-cell terminals.

Skyfence

This is a drone defence system which is activated by a series of detectors, tuned to identify drones in the proximity of the prison. Its purpose is to prevent drugs and other contraband being 'delivered' to prisoners. Guernsey is one of the first organisations in the world to introduce such a system for security.

Community workshop

Plans are well advanced for an 11m x 11m steel portal frame workshop within the prison estate which will accommodate up to 16 prisoners working and learning daily, under tutored supervision, on projects of direct benefit to the community. This will allow the prison charity CLIP (Creative Learning in Prison) to take on larger and more ambitious projects and the additional income will enable development of a wider range of courses and classes outside of the core education curriculum funded by the States. We hope this will encourage more prisoners to engage in education across the board which we applaud, as experience

has shown that purposeful activities increase motivation and engagement and can help reduce the likelihood of re-offending once back in the community.

The running track

This will be of great benefit in terms of general fitness and competitive running and is due to be commissioned early in 2019.

Regime re-profiling exercise

While not due to be introduced until January 2019, a regime re-profiling exercise was conducted during the year under review. Its aim was to make more efficient use of staff and resources and to improve safety at the prison; the new rosters will increase the presence of officers on wings and at weekends and there is a change to the visiting times which will assist prison security during visits. Early consultations did provoke some unease among officers but most could see the logic of the changes.

Purple visits

Plans are well advanced to introduce an 'on screen' visits portal whereby prisoners will have supervised screen-time with their loved ones when personal visits are not possible. It is expected that this facility will be introduced in 2019. The Panel are confident the security issues are being addressed and are pleased about this innovation which will help relieve some of the frustration and sense of alienation which, particularly among non-local prisoners, can arise from being cut off from the family.

CONCERNS

While the appendices provide statistics on specific issues raised during visits, our chief concerns are highlighted below:

Healthcare

We acknowledge that providing healthcare services to an average of 100 prisoners 24/7 throughout the year has special challenges. However, we have issues of concern, especially in the area of mental health. We believe that the quite proper need to maintain 'patient confidentiality' could, in certain circumstances, be counter-productive and not serve the best interests of either the prisoners or staff. It would seem that, while serious physical conditions such as heart problems, diabetes and epilepsy are known by both healthcare staff and prison officers, knowledge of mental conditions and associated medications are the sole province of Healthcare. This risks putting officers at a disadvantage when dealing with prisoners who present challenging behaviours, or who can be vulnerable or dangerous. In some instances behaviour that officers perceived as evidence of a mental disorder would be judged by Healthcare as a behavioural issue not requiring medical intervention. Another concern is if a prisoner is bleeding, the officers are not permitted to know if that prisoner has a transmittable blood disease. This obviously could be a danger to any officer, particularly if there was also a need for physical restraint at the time. In the event of a serious incident both the prison and healthcare would be at risk should it be found that actions could have been taken, and information shared, in order to mitigate that risk.

These are manifestations of what we have observed as a barrier between healthcare staff and prison officers and, as identified, this lack of communication could be detrimental to the welfare of both prisoners and staff.

We recommend that efforts be made to further enhance relationships between prison healthcare and prison officers to encourage a deeper understanding of each other's daily work challenges. In particular we urge that a way be found for relevant information about a prisoner's mental and physical conditions to be shared with prison officers. A need for change has been recognised by management and we look forward to seeing improved relationships during our visits.

We also recommend the recruitment of a mental health professional to the Healthcare team be made a priority.

The Healthcare Unit's effectiveness could be improved if it had access to the EMIS electronic patient health management system, used by many doctors in their primary health care practices. At present all the Healthcare Unit's clinical notes are paper-based and conversion to EMIS would enable, among other things, the notes to be computerised facilitating the sharing and collecting of data, electronic prescribing, clinical governance and health audits.

We recommend funding be provided to introduce the EMIS system at the Prison.

Lack of progress on J Wing refurbishment

J Wing is the prison's largest wing and the subject of most complaints about accommodation – in particular the showers which are in need of an upgrade. We understand that general refurbishment of the wing has been delayed until 2019 and plans are being progressed by States Property Services. We acknowledge that the prison's policy is to provide good quality accommodation for all prisoners and that there is a rolling refurbishment programme, but the wing's showers are falling below acceptable standards and this can impact on prisoner behaviours and compliance.

We recommend refurbishment of J Wing showers be made a priority.

Drugs, 'hooch' and Detoxing

Illicit drugs continue to make their way into the prison estate exacerbating the day-to-day challenges for the staff. It is hoped that the introduction of visits in the afternoon, under the new regime to be introduced in 2019, will have a beneficial impact as there will be more staff available to monitor the visits. Prisoners continue to find ingenious ways to brew hooch, despite daily cell searches and constant vigilance. This presents a risk to health and increases the potential threat of violence to staff.

At present, within 24 to 48 hours of coming into prison, a prisoner is put on a detoxification programme if they report illicit substances use or fail a drugs test. If, on admission, prisoners are already on a detox programme through CDAT (Community Drug and Alcohol Team) their existing programme is continued in the short term. Once detoxification is completed the prisoners revert to the Prison's regime. The medication and programme used by Healthcare are according to NICE guidelines. However, if the prisoner obtains drugs illicitly whilst in prison and continues his/her habit the regulations stipulate that there is no

detoxification available in these circumstances. Therefore, even if a prisoner wishes to kick the habit, they have only symptomatic relief with medications like Paracetamol and Nurofen. While this is of concern to us we acknowledge that the Prison's drugs policy is currently under review and we are hopeful that this anomaly will be addressed.

E-cigarettes

While the prison's no-smoking policy was considered successful when it was introduced there are now concerns in respect of the alternative smoking apparatus which is made available for those who do not wish to quit the habit. The Panel continues to be concerned about the addictive nature of the 'e-burns' available on the market and welcome the efforts being made by prison management to source low and no-nicotine supplies.

Access to bank accounts for ex-offenders

In our last report we expressed our disappointment that the inability of ex-prisoners to access bank accounts remained unresolved. We are pleased to note that two community initiatives - a community savings and a rent deposit scheme – are now in train and will be open to applicants in 2019. The prison's resettlement officer will assist those wanting to apply prior to release. Besides giving an ex-prisoner a feeling of self-esteem, having a bank account is a practical necessity when it comes to employment and paying for accommodation. Having a bank account encourages ex-offenders to see themselves as valued members of society. Not having one has the reverse effect.

Increasing Prison population

With the increased prison population featuring on the Civil Contingencies Risk Register we support initiatives which alleviate the population pressure on the prison – for instance, the Panel would support some form of early conditional release for low risk prisoners who have accommodation and employment. The Panel acknowledges that this is not the prison's concern alone and we note that the States of Deliberation has directed a review of justice locally. We would urge all those who are part of the criminal justice system to examine alternatives to custodial sentences including electronic tagging. We are concerned that with the prison population edging upwards it could easily reach the Prison's Certified Normal Accommodation of 134 and this would place prisoners at increased risk of harm and would see prison budgets spike.

Limited awareness of the role of the IMP

As has been raised in previous Reports, Panel members continue to find that there are prisoners who are unaware of the existence and role of the IMP. Progress has been made since our last report as information will, in 2019, be available on the in-cell terminals so that prisoners can access it at any time and make applications to see us. We have also tried to raise our profile and were pleased to feature in the Winter Edition of the prisoner-produced magazine 'Bang-up'.

We recommend an external publicity drive be undertaken in 2019 and that, internally, a more detailed presentation about our function, perhaps in the form of a video or PowerPoint presentation, be included as part of the induction process, as well as on the in-cell terminals.

General comments

During 2018 we undertook to learn more about the experiences of those committed to prison by visiting the Royal Court's custody suite and talking with the officers, who are often the first point of contact for a person coming into prison. We followed a convicted person's 'journey' from court appearance to induction into the prison. We also broadened our knowledge of how other jurisdictions work by hosting, separately, members from Jersey and the Isle of Wight Independent Monitoring Boards.

We also had to get to grips with the introduction of new Data Protection legislation, which aims to further protect and respect the rights and privacy of those who we deal with in our IMP role. While Panel members are committed to ensuring the information they lawfully collect and share remains secure, we feel the new procedures and processes have created obstacles to the way information flows – particularly how we communicate with prison staff and each other. We accept that a contributing factor is our personal computer equipment not being compatible with the systems used by the States of Guernsey, for instance with SharePoint. While we have received some training and support this will not solve the hardware/software incompatibility problems. We recommend further investigation, and investment if required, to ensure all IMP Members have compatible equipment and adequate connectivity, enabling us to carry out our roles effectively.

The Panel continues to be impressed by the learning and skills initiatives on offer at the prison, and the resulting opportunities provided. The Creative Learning in Prison (CLIP) charity provides prisoners with opportunities to gain new skills such as catering, carpentry, recycling, and horticulture, the latter not only providing fulfilling employment but also fresh produce for use in the prison kitchen, thus saving money.

We are conscious that Guernsey Prison has unique challenges that apply only to island communities like ours. Unlike the UK, where prisons can 'specialise' in certain categories, Guernsey has to accommodate ALL sections of the community on its 12 wings - adult men and women, young offenders, children and vulnerable prisoners, all with varying security categories, offences and lengths of sentence, as well as those on remand. Separation of these disparate groups, avoiding disputes, intimate relationships, bullying and perceived unfair treatment, is not easy and the Panel congratulates Prison Management on achieving relative harmony under these conflicting circumstances.

Members of the IMP often acknowledge in their reports how professionally the staff at Guernsey Prison conduct themselves and it is of note that, historically, a prison officer role was that of a 'turnkey'. Nowadays, officers are trained to carry out a variety of roles and have a unique opportunity to positively influence those in their care.

As already mentioned, we have concerns relating to the impact that prison has on a person's mental health, including those who enter prison with drug dependencies and mental disorders, and we recommend further investment in this area should be prioritised.

In conclusion, responses received from the prison to visit reports, and any follow-ups, have been satisfactory and the Panel has had no need to raise any issues with the Committee for Home Affairs in 2018.

APPENDIX 1 - STATISTICAL ANALYSIS

1. Total number of visits

Type of visit	2018	2017	2016	2015	2014
Unannounced	12	12	12	12	12
Requested Visits	18 ⁺	20	38	15	9
SCAPU*	15	12	6	3	2

*The Segregation, Care and Progress Unit (SCAPU) is used to hold prisoners separately from the main population. There are a number of reasons for a prisoner to be segregated; generally the reason for separation is that they present an increased risk to themselves, to staff, or to the rest of the population and cannot be managed effectively if they remain. SCAPU in Guernsey Prison is not used as a punishment although may be used for a period of cooling off should a prisoner be presenting aggressive behaviour. The ethos of the SCAPU within Guernsey Prison is that of individually-focused care. The intention is to support individuals so that they can safely be returned to mainstream accommodation.

There is a need to ensure that the decision to separate a prisoner, and the experience of separation for that prisoner, are governed by the stated principles of fairness and decency. Separation should never be prolonged, or indefinite, and care should be given to ensure that individuals contained within SCAPU are treated with humanity and decency at all times and to ensure that an individual's mental health is not adversely affected by the separation. To this end the IMP are automatically requested to visit when an individual has been placed in SCAPU.

⁺ One visit was requested by a prisoner but the IMP did not attend as the individual had not followed the full complaint procedure or the procedure was in progress at the time of the request.

Monthly unannounced visits	2018		2017	
Theme of concerns raised	Number of concerns raised by prisoners	Number of enquiries made by IMP	Number of concerns raised by prisoners	Number of enquiries made by IMP
A. Accommodation & Cells	2	3		
B. Adjudications & Warnings / discipline	2	2		
C. Canteen	8	7		
D. Association Time / Gym				
E. Equality, Diversity & Discrimination				
F. Fabric or maintenance of the prison building	12	11	6	3
G. Smoking / Detoxification	1	1		
H. Healthcare	5	8	3	3
I. Incentives & Earned Privileges (IEP) Status			1	1
J. Release on Temporary Licence (ROTL)				
K. Food / Kitchen			4	2
L. Cleanliness				
M. Money / Pay	3	2		
N. Bullying / Unfair treatment			2	1
O. Personal belongings or issues	1		5	4
P. Prison Information System (PIMS)				
Q. Parole				
R. Regime – Education / Employment	2	2		
S. Sentence Planning – Access to courses		1	3	2
T. Information provided			1	
U. Use of force				
V. Visits	2	2		
W. Reception into custody / Info	4	5		
X. Support post-release & resettlement				
Y. Misc. complaints		6		
Z. No concerns raised				

Requested visits by theme	2018		2017	
Theme of concerns raised	Number of concerns raised by prisoners	Number of enquiries made by IMP	Number of concerns raised by prisoners	Number of enquiries made by IMP
A. Accommodation & Cells	3	3		
B. Adjudications & Warnings / discipline	1	1	5	1
C. Canteen				
D. Association Time / Gym			1 (group concerns)	1
E. Equality, Diversity & Discrimination	2	1		
F. Fabric or maintenance of the prison building	2	2	1	1
G. Smoking / Detoxification	1	1	3	3
H. Healthcare	4	4	1	1
I. Incentives & Earned Privileges (IEP) Status	3	2	2	2
J. Release on Temporary Licence (ROTL)				
K. Food / Kitchen	3	2		
L. Cleanliness	1	1		
M. Money / Pay	1			
N. Bullying / Unfair treatment			3	
O. Personal belongings or issues				
P. Prison Information System (PIMS)				
Q. Parole				
R. Regime – Education / Employment				
S. Sentence Planning – Access to courses			2	1
T. Information provided			1	
U. Use of force				
V. Visits				
W. Reception into custody / Info				
X. Support post-release & resettlement				
Y. Misc. complaints				
Z. No concerns raised				

APPENDIX 2 - ANONYMOUS EXAMPLES OF PRISONERS' CONCERNS

Fabric of the Building

The highest number of complaints from prisoners were in respect of the fabric of the building.

The Panel responded to complaints about ventilation within the prison facility; issues appear to be due to the ventilation system that was installed many years ago. Unfortunately the poor original design has been a thorn in the side of the prison and has led to numerous prisoner complaints over the years. We witnessed the vents being stuck open which resulted in prisoners asking for material to cover the vent in an attempt to stop the draught.

The Panel heard from a number of prisoners on one particular wing who were dissatisfied with the lack of adequate drainage which had caused water to lay stagnant in the showers, causing a pungent smell which permeated through the wing.

Occupants on another wing complained that a bad smell emanated from their kitchen sink, thought to be due to water laying idle in the pipes. The apparent issues with the pipe system may have also contributed towards the backing up of the washing machine, causing flooding and, as a consequence, an odour developed.

Equality

The Panel have previously reported that the female population often feel that they do not get the same opportunities as the male population. In the reporting period, for instance, when speaking with the females who go out to work under Release on Temporary Licence (RoTL) we heard that, as all the females were located on one wing, there was a lack of quiet area when they returned from work. It was noted that those in the male population on RoTL had a separate wing.

As already observed in this report, the Panel are conscious that Guernsey Prison is the only facility on-island equipped to accommodate adult men and women, young offenders, children and vulnerable prisoners all with varying security categories, offences and lengths of sentence. The Panel acknowledges that the Prison Management have a difficult and unenviable task of maintaining separation for all of these groups whilst at the same time needing to access and use the same facilities.

Healthcare

The Panel are mindful of the various medical requirements that exist within the custodial setting. The Panel made a number of separate enquires into waiting times for dental appointments and there were a number of concerns raised by prisoners with regards to the medical care that they received; the queries ranged from the strength and type of medication to the length of time they were having to wait before an appointment. The

Panel are pleased to report that all prisoners who required medical attention were offered the correct and appropriate level of healthcare provision to address their own specific needs, some delays notwithstanding.

E-Burns

The Panel made a number of enquiries in respect of the E-Cigarettes available within the Prison, following the introduction of the smoking ban in 2013. Prisoners complained that they were unable to buy nicotine-free or low nicotine liquid for their E-Burns. In addition, prisoners have complained that when they receive an adjudication award of 'loss of canteen (LOC)' they are not allowed to purchase the products.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

The States of Deliberation have the power to annul the Statutory Instruments detailed below.

No. 77 of 2019

THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT NO. 3) REGULATIONS, 2019

In pursuance of sections 10 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990, made by the Committee *for* Employment & Social Security on 2nd July, 2019 are laid before the States.

EXPLANATORY NOTE

These Regulations add a number of drugs to the list of drugs that may be prescribed as pharmaceutical benefit.

These Regulations come into force on the 3rd July, 2019.

No. 78 of 2019

THE MISUSE OF DRUGS (MODIFICATION NO. 2) ORDER, 2019

In pursuance of section 30(3) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended, "The Misuse of Drugs (Modification No. 2) Order, 2019" made by the Committee *for* Health & Social Care on the 3rd July, 2019 is laid before the States.

EXPLANATORY NOTE

This Order amends the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 ("the Law") and the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997 ("the Ordinance").

Article 1 of this Order amends Part III of the First Schedule to the Law by inserting Gabapentin and Pregabalin in paragraph 1(a) of that part. This amendment makes Gabapentin and Pregabalin Class C controlled drugs under the Law.

Article 2 of this Order introduces the amendments to the Ordinance made by articles 3, 4 and 5 of this Order.

Article 3 of this Order repeals subsection (4) of section 14A of the Ordinance, which exempts from the restrictions in section 14 of the Ordinance cannabis-based product for medicinal use in humans administered to animals for research purposes.

Article 4 of this Order inserts Gabapentin and Pregabalin into Schedule 3 to the Ordinance. This allows certain medical and healthcare professionals and other persons to prescribe, produce, supply, offer to supply, administer or possess these drugs, subject to record-keeping requirements prescribed in the Ordinance.

Article 5 of this Order replaces paragraph 10 of Schedule 5 to the Ordinance (which exempts certain cannabidiol preparations from prohibitions relating to import, export, and supply) with a revised paragraph.

The revised paragraph 10 retains the existing requirements for these cannabidiol preparation to have clearly labelled ingredients, not to contain any plant material visible to the naked eye and not to contain any other drug other than cannabinal or cannabinal derivatives.

However, the revised paragraph 10 provides an alternative threshold for the maximum allowable content of cannabinal and cannabinal derivatives. Currently, a cannabidiol preparation is only allowed to contain not more than 3% cannabinal and cannabinal derivatives in aggregate relative to the total weight of its cannabidiol content. The revised paragraph 10 provides an alternative content threshold that applies where a preparation contains not more than 2.5% cannabidiol relative to its total weight. In this case, the preparation is allowed to contain up to 0.1% cannabinal and cannabinal derivatives in aggregate relative to the total weight of the preparation, as this level of content is considered to be relatively harmless.

In addition, the revised paragraph 10 would require attestation as to the content threshold by an official certificate or a statement by the States Analyst only where the preparation is imported, supplied or offered to be supplied in the course of a business. In the case of importation other than in the course of a business, the preparation needs to satisfy the Chief Revenue Officer or the Chief Pharmacist (whether by attestation or otherwise) that the preparation meets the content threshold.

Lastly, the revised paragraph 10 requires attestation by an official certificate of analysis to be demonstrably and clearly linked to a particular preparation by batch or lot number or otherwise.

Articles 6 and 7 are the citation and commencement provisions respectively.

This Order came into force on the 4th July, 2019.

No. 80 of 2019

**THE TERRORISM AND CRIME (BAILIWICK OF GUERNSEY)
(INFORMATION) REGULATIONS, 2019**

In pursuance of Sections 15D and 82 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, the Disclosure (Bailiwick of Guernsey) (Information) Regulations, 2019 made by the Committee for Home Affairs on 22nd July 2019, is laid before the States.

EXPLANATORY NOTE

These Regulations govern the obtaining of information by the Financial Intelligence Service where a report has been made by a party listed in section 15D of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 and as a result, the Financial

Intelligence Service reasonably believes that a person within the Bailiwick possesses or controls information which is necessary or expedient for the proper discharge by the Financial Intelligence Service of its functions.

Where the Regulations apply, a prescribed police officer, by notice in writing served upon the relevant person, may require that person to provide the officer (or any other specified police officer) with such information relating to the report as may be specified in writing within such period which, in usual circumstances shall not be less than 7 days, and in such form and manner, as may be specified.

These Regulations come into force on the day on which they are made.

No. 81 of 2019

**THE DISCLOSURE (BAILIWICK OF GUERNSEY) (INFORMATION)
REGULATIONS, 2019**

In pursuance of Sections 11A and 16 of the Disclosure (Bailiwick of Guernsey) Law, 2007, the Disclosure (Bailiwick of Guernsey) (Information) Regulations, 2019 made by the Committee for Home Affairs on 22nd July 2019, is laid before the States.

EXPLANATORY NOTE

These Regulations govern the obtaining of information by the Financial Intelligence Service where a report has been made by a party listed in section 11A of the Disclosure (Bailiwick of Guernsey) Law, 2007 and as a result, the Financial Intelligence Service reasonably believes that a person within the Bailiwick possesses or controls information which is necessary or expedient for the proper discharge by the Financial Intelligence Service of its functions.

Where the Regulations apply, a prescribed police officer, by notice in writing served upon the relevant person, may require that person to provide the officer (or any other specified police officer) with such information relating to the report as may be specified in writing within such period which, in usual circumstances shall not be less than 7 days, and in such form and manner, as may be specified.

These Regulations come into force on the day that they are made

No. 82 of 2019

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT)
(AMENDMENT NO. 4) REGULATIONS, 2019**

In pursuance of sections 10 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990, made by the Committee for Employment & Social Security on 23rd July, 2019 are laid before the States.

EXPLANATORY NOTE

These Regulations add a number of drugs to the list of drugs that may be prescribed as pharmaceutical benefit and substitute one drug on that list with another form of the same drug.

These Regulations come into force on the 24th July, 2019.

No. 83 of 2019

WASTE DISPOSAL AND RECOVERY CHARGES REGULATIONS, 2019

In pursuance of Section 32(3)(c) and (4) and section 72 of the Environmental Pollution (Guernsey) Law, 2004 and all other powers enabling it in that behalf, the Waste Disposal and Recovery Charges Regulations, 2019, made by the Waste Disposal Authority on 25th July 2019, is laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the charges, or rates of charge, payable from 1st August 2019 as a pre-condition of the acceptance of waste of particular descriptions by the Waste Disposal Authority for disposal or recovery at specified public waste management sites (see Table 1 in Schedule 1). They also set out charges in 2019 for the reloading of waste which is not accepted at specified public waste management sites (see Table 2 in Schedule 1).

The main changes from the previous Waste Disposal and Recovery Charges (No. 2) Regulations, 2018 are to Schedule 1, Table 1, which sets out amended rates of charge as a pre-condition of the acceptance of certain wastes at Mont Cuet (namely road sweepings, gully sludges, and water treatment sludges), and the addition of food waste as a description of recyclable waste in Schedule 2.

Schedule 2 lists descriptions of recyclable waste for which higher charges are payable, by reason of falling within the definition of "contaminant" in regulation 3(1), when delivered to a waste site as part of a mixed load rather than segregated for recycling. The higher charge is that in category D2 of Table 1 of Schedule 1. There are also some minor consequential amendments including to the definition of "contaminant" in regulation 3(1) and to Schedule 2.

These Regulations came into force on 1st August, 2019.

No. 84 of 2019

**THE INCOME TAX (SUBSTANCE REQUIREMENTS)
(IMPLEMENTATION) (AMENDMENT) REGULATIONS, 2019**

In pursuance of section 203A of the Income Tax (Guernsey) Law, 1975, as amended, "The Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2019" made by the Policy & Resources Committee on 29 July 2019, are laid before the States.

EXPLANATORY MEMORANDUM

These Regulations amend the Income Tax (Substance Requirements) (Implementation) Regulations, 2018, which implement and enable the administration and enforcement in domestic law of substance requirements in respect of companies which are tax resident, by clarifying the core income generating activities required for an IP company; amending the definitions in respect of a high risk IP company, and an IP asset; specifying the types of information required to satisfy the Director that the presumption that a high risk IP company fails the substance requirements is rebutted; extending the substance requirements to companies granted exemption from tax that are not collective investment vehicles; and by making all necessary consequential changes.

The full text of the legislation can be found at:

<http://www.guernseylegalresources.gg/article/90621/Statutory-Instruments>

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

THE REFORM (GUERNSEY) (AMENDMENT) (NO. 2) LAW, 2019

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Reform (Guernsey) (Amendment) (No. 2) 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

This Law primarily amends the Reform (Guernsey) Law, 1948 ("the Reform Law") to give effect to the recent Resolutions of the States in respect of the introduction of Island-Wide Voting from the 2020 election. It also gives effect to Resolutions in respect of the publication of candidates' criminal convictions, and powers of the Scrutiny Management Committee.

The provisions relating to scrutiny comprise an amendment to Article 20H of the Reform Law, and the insertion of a new Article 20I. The amendment to Article 20H allows for the power in that Article to amend by Ordinance the preceding provisions of the Law on privilege to be used to apply any of those provisions, with or without modification, to any panel appointed by a Committee to carry out particular aspects of its mandate on that Committee's behalf. Article 20I empowers the States by Ordinance to facilitate the effective scrutiny by the SMC of the conduct, policies, use of resources, and activities in general, of any Committee, any person or statutory body whose functions include functions of a public nature, and any other organisation which is or has been in receipt of public funds.

The provisions relating to the publication of candidates' criminal convictions are primarily at section 14 (which amends Article 32 of the Reform Law) and section 18 (which amends Article 35 of the Reform Law). A new criminal offence relating to making false, deceptive or misleading statements in respect of criminal convictions is created by the insertion of Article 48C in the Reform Law (by section 32).

Other changes made to the Reform Law include providing for a person to apply to the Registrar-General to have his or her name and address omitted from the publicly available Electoral Roll (Article 34A, inserted by section 17); provision in relation to the creation of a Supplementary Electoral Roll, to enable people to vote who apply for inscription on the Electoral Roll after its closure (Article 34B, inserted by section 17); provision requiring political parties to be registered at the Greffe (the Fourth Schedule, inserted by section 43); provisions governing donations and loans to candidates and political parties (Article 44A and the Third Schedule, inserted by sections 29 and 42); and provision in respect of the appointment of General Election observers (Article 72B, inserted by section 37). In this regard it should be noted that the Law provides for the Third and Fourth Schedules to be amendable by Ordinance (Article 77A, inserted by section 39). The Law also replaces the archaic provisions of the *Loi relative au Scrutin Secret* (the Secret Ballot Law of 1899) with appropriate equivalent provision; see for example substituted Article 30(1), inserted by section 12. It will also be noted that the changes made to Article 26 of the Reform Law by section 8 are central to the introduction of Island-Wide Voting.

The full implementation of Island-Wide Voting will also require the making of several pieces of secondary legislation. Relevant to this is the widening, at section 44 of the Law, of the Ordinance-making power at section 15A of the Reform (Amendment) (Guernsey) Law, 1972 in relation to providing for advance voting, and voting outside one's Parish.

The Law will come into force on the day appointed by Ordinance of the States (section 48).

PROJET DE LOI

ENTITLED

The Reform (Guernsey) (Amendment) (No. 2)

Law, 2019

THE STATES, in pursuance of their Resolutions of the 18th February 2016^a, the 17th March, 2016^b and the 25th April, 2019^c, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Amendment of the Reform Law.

1. The Reform (Guernsey) Law, 1948^d is amended as follows.
2. In paragraph (2) of Article 5, for the words from the start to subparagraph (a) substitute "The following provisions apply to an election for the

^a Article II of Billet d'État No. IV of 2016.

^b Article III of Billet d'État No. IX of 2016.

^c Article II of Billet d'État No. VII of 2019.

^d Ordres en Conseil Vol. XIII, p. 288; as amended by Ordres en Conseil Vol. XIV, p. 407; Vol. XVI, p. 178; Vol. XVIII, p. 275; Vol. XIX, pp. 84 and 140; Vol. XXII, p. 122; Vol. XXIII, p. 476; Vol. XXV, p. 326; Vol. XXVI, p. 255; Vol. XXIX, p. 56; Vol. XXX, p. 16; Vol. XXXI, pp. 164 and 278; Vol. XXXII, p. 41; Vol. XXXIV, p. 397; Vol. XXXVI, p. 478; Vol. XXXVIII, pp. 150 and 295; Order in Council No. XIII of 2003; No. III of 2004; No. II of 2007; No. XX of 2007; Nos. XIII and XXII of 2008; No. VII of 2010; Nos. II and XIV of 2012; No. XVII of 2015; Ordinance No. XXXIII of 2003; No. XXVI of 2008; No. XXXII of 2011; and No. IX of 2016.

office of Jurat –", at the end of subparagraph (c) delete "and", at the end of subparagraph (d) insert "and,", and after subparagraph (d) insert –

"(e) the ballot papers shall be kept in a sealed box, and after the elected candidate has been sworn in the ordinary manner, the ballot papers shall be destroyed."

3. In Article 8, at the end of paragraph (e) for "." substitute ",", and after paragraph (e) insert –

"(f) he is inscribed on the Electoral Roll."

4. In Article 9, after paragraph (1) insert –

"(2) Before the election the Presiding Officer shall, by means of an announcement in the Gazette Officielle, notify the Members of the States of Election of the nominations delivered to him in accordance with paragraph (1)."

5. At the end of Article 20H(2)(b), for "." substitute ", and", and immediately after that paragraph insert –

"(c) may apply any of those provisions, with or without modification, to any standing or ad hoc panel appointed pursuant to the powers and duties of any Committee of the States to carry out particular aspects of its mandate on that Committee's behalf."

6. The following Article is inserted between Article 20H and Article 22 -

"Scrutiny.

20I. (1) The States may by Ordinance make any such provision as might be made by Order in Council to facilitate the effective scrutiny by the Scrutiny Management Committee of the conduct, policies, use of resources, and activities in general, of any committee of the States of Guernsey, any person or statutory body whose functions include functions of a public nature, and any other organisation which is or has been in receipt of public funds.

(2) Without prejudice to the generality of the foregoing, an Ordinance made under this Article may in particular -

- (a) confer on witnesses appearing before the Scrutiny Management Committee or any standing or *ad hoc* panel appointed by that Committee immunity from civil or criminal proceedings in respect of words spoken before it or contained in any document submitted to and accepted by it as evidence,
- (b) provide that answers given, statements made, and (once accepted as evidence) documents produced, by such a witness shall not be admissible in evidence against that person in any other civil or criminal proceedings,

- (c) specify circumstances in which, and procedures in accordance with which, any immunity and exclusion described in paragraphs (a) and (b) respectively may be withdrawn by the person chairing a meeting of that Committee or any such panel,
- (d) make provision in respect of the power of the Scrutiny Management Committee to request any person to –
 - (i) appear before that Committee or any standing or *ad hoc* panel appointed by that Committee, and
 - (ii) give evidence and produce documents to that Committee or any such panel,
- (e) provide for any specified court in Guernsey, on the application of the Scrutiny Management Committee, to order any person to –
 - (i) appear before that Committee or any standing or *ad hoc* panel appointed by that Committee, and
 - (ii) give evidence and produce documents to that Committee or any

such panel, and

(f) make it an offence, punishable on conviction by imprisonment for a term of up to 2 years and to a fine of up to level 5 on the Uniform Scale, for any person to –

(i) disobey an order of a Guernsey court requiring that person so to appear or to produce documents, or

(ii) refuse to be examined before, or to answer any lawful and relevant question put by, that Committee or panel,

(iii) knowingly or recklessly give false or misleading oral or written evidence to that Committee or panel,

(iv) obstruct, deter, harass or molest any person who has been required or requested to appear before or produce documents to that committee or panel.

(3) In this Article "**proceedings**" includes disciplinary proceedings before an internal or professional tribunal; and in this Article and Article 20E, "**the Scrutiny Management Committee**" means the States

Scrutiny Management Committee."

7. In Article 25, at the start of paragraph (2) insert "Subject to Article 34A (Application for name and address to be omitted from Electoral Roll)", and for "Christian names" substitute "forenames", and after paragraph (3) insert –

"(4) The Electoral Roll shall be divided into 10 sections whereof each shall represent one Parish."

8. In Article 26 –

(a) for the Article heading, substitute "The Electoral District, and polling stations",

(b) delete paragraph (1),

(c) for paragraph (2), substitute –

"(2) In the General Election to be held in 2020, and thereafter, for the purposes of elections to the office of People's Deputy Guernsey shall comprise one Electoral District returning 38 People's Deputies.",

(d) delete paragraph (2A), and

(e) in paragraph (3), delete "In each of the Districts," for "the Constables of the Parishes concerned" substitute "the Registrar-General", for "and the Constables of a Parish" substitute "and the Registrar-General", delete

"therein", and for "they" substitute "he".

9. In Article 27 –

(a) after paragraph (1A) insert –

"(1B) The Registrar-General may, on receipt of an application for inclusion on the Electoral Roll, request the applicant to provide evidence of his date of birth.

(1C) If in the opinion of the Registrar-General the applicant fails unreasonably to provide evidence of his date of birth on a request being made under paragraph (1B), or the evidence provided shows that the person is not entitled to be inscribed on the Electoral Roll, or the Registrar-General is otherwise not satisfied with the evidence provided, the Registrar-General –

(a) shall refuse to grant the application, if the evidence shows that the person is not entitled to be inscribed on the Electoral Roll, and

(b) may refuse to grant the application until evidence of the applicant's date of birth which he considers satisfactory is provided, in any other case.",

(b) in paragraph (2), after "this Law," insert "and to the provisions of any Ordinance made under section 15A of the Reform (Amendment) (Guernsey) Law, 1972", for "for a District" substitute "representing a Parish",

and for "that District" substitute "that Parish",

(c) for paragraph (3), substitute –

"(3) Subject to paragraph (3B), at an election the Central Returning Officer shall cause to be kept at each polling station by the Polling Station Officer a list (hereinafter referred to as "**a list of voters**") which shall, in respect of every person who voted at that polling station, specify his surname, the initials of his forenames and the number assigned to him pursuant to Article 25(2), and the Central Returning Officer shall cause the lists from each polling station to be compared and shall report to the Law Officers of the Crown the name and address of any person appearing to have voted more than once at that election."

(d) in paragraph (3A), delete "by the Returning Officer of each District", and for "Returning Officer" substitute "Central Returning Officer",

(e) after paragraph (3A) insert –

"(3B) The States' Assembly and Constitution Committee may, after consulting the Registrar-General, make regulations empowering the Central Returning Officer to provide to each Polling Station Officer a mechanism different from a list of voters for recording the details of persons voting at the Polling Station Officer's polling station, for the purpose of more efficiently identifying persons who have voted more than once at the election.

(3C) The States' Assembly and Constitution Committee may not make regulations under paragraph (3B) unless the Registrar-General has

confirmed that he is satisfied that the specified mechanism does not threaten the secret ballot in particular or the integrity of the election in general.

(3D) Regulations under paragraph (3B) may provide that the mechanism specified in the regulations –

(a) shall be used instead of a list of voters, or

(b) may be used as an alternative to, or in addition to, a list of voters.", and

(f) after paragraph (4) insert –

"(5) For the purposes of this Part, a person is "**ordinarily resident**" in Guernsey during any period if throughout that period he was living lawfully in, and had his home in, Guernsey; and for these purposes a person may be ordinarily resident in Guernsey if he has no fixed or permanent address .".

10. In Article 28, for "and a person shall vote only in the District in respect of which his name appears in the Electoral Roll", substitute "and (subject to the provisions of any Ordinance made under Article 34B and under section 15A of the Reform (Amendment) (Guernsey) Law, 1972) a person shall vote only in the Parish in respect of which his name appears in the Electoral Roll".

11. In Article 29 in paragraph (1) delete "for any District" and "in respect of that District".

12. For Article 30 substitute –

"Secret ballot, and number of votes that may be cast in a General Election.

30. (1) Voting in an election for the office of People's Deputy shall be by secret ballot, carried out by means of a ballot paper marked in such a manner that its authenticity can be verified, and placed in a ballot box suitable for the purpose.

(2) In the General Election to be held in 2020 and at each General Election thereafter, a person entitled to vote in accordance with this Law may cast votes for up to 38 candidates."

13. In Article 31, for "a further election" to the end, substitute "the result shall be determined by the drawing of lots, overseen by the Central Returning Officer".

14. In Article 32 –

(a) in paragraph (1), for "on the section" to the end substitute "on the Electoral Roll, and shall otherwise be made in such form as the Presiding Officer of the States directs, and shall be delivered to the Presiding Officer not later than such time on such day as the Presiding Officer may appoint in accordance with a recommendation made by the States' Assembly and Constitution Committee",

(b) in paragraph (2), after "declaring" insert "-", label the remaining words of the paragraph "(a)" and after subparagraph (a) insert –

"(b) his unspent convictions which resulted in sentences of imprisonment as defined in the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 in any jurisdiction anywhere in the world, other than convictions in respect of an act or default which would not constitute an offence if committed in Guernsey; or, if he has no such unspent convictions, declaring that to be the case.", and

(c) for paragraph (3) substitute –

"(3) The Presiding Officer of the States may, in respect of any declaration made by a candidate under paragraph (2)(b), take such steps as he reasonably considers necessary and proportionate to verify the information in the declaration, and (subject, for the avoidance of doubt, to any court order to the contrary) he shall require such declarations to be destroyed as soon as reasonably practicable after the conclusion of the election to which they relate.".

15. In Article 33, delete "for that District".

16. In Article 34 –

(a) before paragraph (1), insert –

"(A1) Paragraphs (5) – (7) (relating to the publication and availability for inspection of the Electoral Roll) of this Article are subject to

Article 34A (application for name and address to be omitted from Electoral Roll).".

(b) in paragraphs (4) and (5) for "District" substitute "Parish",

(c) in paragraph (5), for "District" substitute "Parish", and in paragraphs (5) and (6), for "States' Assembly and Constitution Committee" substitute "Committee for Home Affairs",

(d) after paragraph (8A), insert –

"(8AA) The Registrar-General may remove a person's name and address from the Electoral Roll on an application being made to him in accordance with this Article, or of his own volition in circumstances where he is satisfied that one of the grounds in paragraph (8A) is satisfied in respect of that person.",

(e) for paragraph (9), substitute –

"(9) Subject to the provisions of any Ordinance made under Article 34B (Supplementary Electoral Roll) of this Law, and under section 15A (Ordinances as to postal voting, etc.) of the Reform (Amendment) (Guernsey) Law, 1972, the section of the Electoral Roll compiled and amended as in this Article provided in respect of each Parish shall constitute the Electoral Roll of that Parish and shall determine, subject to Articles 27(4) and 27A of this Law, whether or not a person is entitled to vote in that Parish at an election for any of the offices of People's Deputy, Constable or

Douzenier; and at any election a copy of the appropriate section shall be furnished free of charge by the Registrar-General to each Polling Station Officer, and each Polling Station Officer shall ensure that a copy is available at his polling station.",

(f) in paragraph (9A), for "the Returning Officer of each District" substitute "each Polling Station Officer",

(g) after paragraph 9(A), insert –

"(9B) In paragraphs 9 and 9A, references to a Polling Station Officer include references to the Returning Officer for the election where the election in question is an election to the office of Constable or Douzenier.",

(h) in paragraph (11A), after "paragraph (11)" insert "and the provisions of any Ordinance made under Article 34B", and

(i) delete paragraph (12).

17. After Article 34 insert –

"Application for name and address to be omitted from Electoral Roll.

34A. (1) A person may apply to the Registrar-General for the person's name and address to be omitted from the Electoral Roll published for inspection in accordance with paragraphs (5) to (7) of Article 34 and rules made thereunder (in this Article and Articles 35, 48A and 72B, the "**Published Electoral Roll**").

(2) For the avoidance of doubt, the omission of a person's name and address from the Published Electoral Roll in consequence of an application under paragraph (1) does not affect a person's entitlement to vote at an election.

(3) An application under paragraph (1) may only be made on the grounds that the person, his family or his property would be at risk of harm or damage if the person's name and address were included in the Published Electoral Roll, and shall be made in such form and manner and accompanied by such information, documents and other material as the Registrar-General may direct.

(4) On an application being made under paragraph (1), if the Registrar-General is satisfied that the grounds in paragraph (3) are made out, he shall grant the application and take all reasonable steps to ensure that the applicant's name and address are omitted from the Published Electoral Roll.

(5) In either of the circumstances set out in paragraph (6), the Registrar-General may inscribe or re-inscribe in the Published Electoral Roll the name and address of a person that have been omitted from the Published Electoral Roll pursuant to an application in accordance with this Article.

(6) Those circumstances are –

(a) on a request being made to the Registrar-General by the person, and

(b) on the volition of the Registrar-General, where–

(i) the Registrar-General is satisfied that there are no longer grounds for the omission, and

(ii) the person has consented in writing to the inscription or re-inscription.

Supplementary Electoral Roll.

34B. (1) Subject to the provisions of paragraph (2), the States may by Ordinance make such provision from time to time as it thinks fit in respect of the creation of a Supplementary Electoral Roll, for the purpose of enabling persons eligible for inscription on the Electoral Roll who apply after the date of closure of the Electoral Roll prior to an election to be inscribed on that Supplementary Electoral Roll and to vote in that election, while maintaining the integrity of that election.

(2) Without prejudice to the generality of the foregoing, an Ordinance under this Article –

(a) shall specify the period (which may be specified as ending on any date after the closure of the Electoral Roll and before the date of the election in question) during which a person may apply for inscription on the Supplementary Electoral Roll,

(b) may provide that specified provisions of this

Law and the Reform (Amendment) (Guernsey) Law, 1972 apply *pari passu*, or with such modifications as may be specified, in respect of the Supplementary Electoral Roll as they apply in respect of the Electoral Roll, and

- (c) may place restrictions on the methods by which persons inscribed on the Supplementary Electoral Roll may vote in the election in question, including (but not limited to) providing that a person inscribed on the Supplementary Electoral Roll may not vote by postal vote."

18. In Article 35 –

- (a) in the heading, for "Electoral Roll" substitute "Published Electoral Roll and candidates' criminal conviction declarations",
- (b) in paragraph (1), at the start insert "Subject to rules made under paragraphs (2) and (3)," and for "Electoral Roll" substitute "Published Electoral Roll and of the declarations of candidates made under Article 32(2)(b) ("criminal conviction declarations")",
- (c) in paragraph (2), in each place for "Electoral Roll" substitute "Electoral Roll and the Published Electoral Roll", and for "States' Assembly and Constitution

Committee" substitute "Committee for Home Affairs",

(d) after paragraph (2), insert –

"(3) The States' Assembly and Constitution Committee may by rules made under this paragraph make such provision as they think fit in relation to –

- (a) the persons or classes of persons to whom copies of criminal conviction declarations shall be made available,
- (b) the manner in which, the means by which and the times and places at which copies of criminal conviction declarations shall be made available,
- (c) the charges and conditions subject to which copies of criminal conviction declarations shall be made available, and
- (d) the publication and making available for inspection of information relating to the verification of criminal conviction declarations.

(4) Subject to paragraphs (5) and (6), rules made under paragraph (2) may make different provision in relation to the availability of the Electoral Roll, and of the Published Electoral Roll.

(5) Rules made under paragraph (2) must provide that only the Published Electoral Roll shall be available to candidates.

(6) When making rules under this Article, the Committee for Home Affairs must consider whether such rules would create or increase a risk of harm of the type described in Article 34A(3)."

19. In Article 37, for the heading substitute "Election officers", and from paragraph (a) to the end substitute –

"(a) a Polling Station Officer for each polling station, who shall appoint such Deputy Polling Station Officers to assist him as he may deem necessary, and who shall have the duties set out in Article 38, and

(b) a Central Returning Officer, who shall appoint such Scrutineers to assist him as he may deem necessary, and who shall cause the votes cast in the Electoral District to be counted,

and every Polling Station Officer and the Central Returning Officer shall on appointment be sworn as such before the Royal Court."

20. For Article 38, substitute –

"38. (1) The Polling Station Officers shall supervise the conduct of the ballot in their respective polling stations and in particular shall seal the ballot boxes at the conclusion of the voting and shall hand the same to the

Central Returning Officer, who shall cause all the votes cast in the Electoral District to be counted and shall forthwith communicate the result of such count to the Presiding Officer of the States.

(2) The Central Returning Officer may make arrangements for votes cast in a general election to be counted electronically if in his opinion and the opinion of the Registrar-General those arrangements would not threaten the integrity of the election."

21. In Article 38A –

(a) in paragraph (1), delete "in an Electoral District", "at any place" and "in that district", and for "that place" substitute "the count", and

(b) in paragraph (3), in each place for "the Returning Officer" substitute "the Central Returning Officer".

22. For Article 38B(1), substitute –

"(1) A Polling Station Officer or Deputy Polling Station Officer may require any person who he considers is behaving in a disorderly or indecent manner in, or in the precincts of, a polling station to leave that polling station and its precincts.

(1A) The Central Returning Officer or any Scrutineer may require any person who he considers is behaving in a disorderly or indecent manner in, or in the precincts of, a place where votes are being counted to leave that place and its precincts."

23. In Article 38C for "returning officers" substitute "the Central Returning Officer, Polling Station Officers, Deputy Polling Station Officers".

24. For Article 39(2), substitute –

"(2) The States' Assembly and Constitution Committee may, after consulting the Registrar-General, make regulations from time to time varying the times at which the polling stations shall open and close and may so provide that specified polling stations, or polling stations in specified Parishes, shall open and close at different times."

25. In Article 40, for "each Returning Officer shall in respect of his District", substitute "the Central Returning Officer shall".

26. In Article 41 –

- (a) delete "in the District concerned",
- (b) for "the Returning Officer" substitute "the Central Returning Officer",
- (c) delete "for that District", and
- (d) delete "as to the result of the poll in respect of that District".

27. In Article 43, for "the Returning Officer" substitute "the Central Returning Officer".

28. In Article 44, for the title substitute "Expenditure by candidates and political parties", in paragraph (1) delete from "Save that nothing" to the end, and after paragraph (1) insert –

"(1A) An Ordinance under paragraph (1) may make provision in respect of expenditure by political parties, and by candidates in an election who are members of, or otherwise affiliated to, political parties and restrictions thereon; and such an Ordinance may set permitted levels of expenditure by candidates and by political parties, and make other related provision, including (but not limited to) allowing for candidates to transfer a defined percentage of their permitted expenditure as candidates to a political party, for that party to spend on promotion of the party and its policies.

(1B) Without prejudice to the generality of paragraph (1A), an Ordinance under paragraph (1) may provide that where a political party contravenes a restriction therein on expenditure by political parties, one or more specified officers of that political party shall be guilty of an offence and shall be liable on conviction to a fine not exceeding level 5 on the uniform scale."

29. After Article 44, insert –

"Donations.

44A. (1) The Third Schedule ("Donations"), which makes provision for the purposes of this Law in respect of -

- (a) when gifts, loans and the supply of goods and services are donations,

(b) the value to be attributed to a donation, and

(c) related matters,

shall have effect.

(2) A political party, or a candidate in an election for the office of People's Deputy, may not keep an anonymous donation; and for the purposes of this Law, a donation is anonymous if the recipient is unable to ascertain the identity of the donor.

(3) A political party, or a candidate in an election for the office of People's Deputy, may not keep a donation from –

(a) an individual, if that individual is not eligible to be inscribed on the Electoral Roll, or

(b) any legal person, unincorporated association or other body based outside Guernsey.

(4) A political party which, or candidate for the office of People's Deputy who, receives a donation of a type described in paragraphs (2) or (3) must, within ten working days of its receipt –

(a) return it to the donor, or

(b) send it to the Greffier for the Greffier to pay it to the States.

(5) The States' Assembly and Constitution Committee may issue guidance in respect of subsections (3) and (4).

(6) A candidate who fails to comply with a prohibition or requirement in this Article, and the treasurer of a political party which fails to comply with such a prohibition or requirement, is guilty of an offence and is liable on conviction to a fine."

30. In Article 45 –

(a) for the Article heading, substitute "Returns of expenditure by, and donations received by, candidates and political parties",

(b) in paragraph (1), for "the Returning Officer" substitute "the Central Returning Officer",

(c) after paragraph (1), insert –

"(1A) Every political party which supported or endorsed candidates at any election shall during the fourteen days next following the date of such election submit to the Central Returning Officer a return, in such form as the Central Returning Officer may direct, showing full particulars of all moneys or money's worth expended or given by that party in respect of its promotion of the party or its policies at such election, and shall submit therewith vouchers supporting such disbursements and a declaration in writing signed by two office-holders of the party that the particulars shown in such return are to the best of their knowledge and belief correct.

(1B) Every candidate at any election, and every political party which supported or endorsed candidates at any election, shall during the fourteen days next following the date of such election submit to the Central Returning Officer a return, in such form as the Central Returning Officer may direct, showing the donations received by that candidate or party in respect of the election of a value equal to or greater than £50 or, if no such donations have been received, a nil return, and shall submit therewith a declaration in writing signed by the candidate, or two office-holders of the party (as the case may be), that the particulars shown in such return are to the best of their knowledge and belief correct.

(1C) The States may by Ordinance amend the monetary figure in paragraph (1B).", and

(d) in paragraph (2), after "Any candidate" insert, "or any leader or treasurer of a political party,", and for "the last preceding Article", substitute "Article 44".

31. In Article 48 delete "-", "(a)", and from ", and" to the end.

32. After Article 48 insert –

"Appeals.

48A. (1) A person aggrieved by a decision of the Registrar-General to refuse to –

(a) inscribe or re-inscribe his name and address in the Electoral Roll,

- (b) remove his name and address from the Electoral Roll,
- (c) omit his name and address from the Published Electoral Roll under Article 34A, or
- (d) inscribe or re-inscribe his name and address in the Published Electoral Roll under Article 34A,

may appeal to the Court against the decision.

(2) The grounds of an appeal under this Article are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this Article shall be instituted -

- (a) within a period of 28 days immediately

following the date of the notice of the Registrar-General's decision, and

- (b) by summons served on the Registrar-General stating the grounds and material facts on which the appellant relies.

(4) The Registrar-General may, where an appeal under this Article has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subparagraph are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007.

(5) On an appeal under this section the Court may -

- (a) set the decision of the Registrar-General aside and, if the Court considers it appropriate to do so, remit the matter to the Registrar-General with such directions as the Court thinks fit, or

(b) confirm the decision.

(6) An appeal from a decision of the Court under this Article lies to the Court of Appeal on a question of law.

(7) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats.

Political Parties.

48B. The Fourth Schedule (Political Parties) shall have effect.

False, deceptive or misleading statements in respect of criminal conviction declarations.

48C. (1) A person commits an offence if, when making a declaration under Article 32(2)(b) (a criminal conviction declaration) he does any of the following –

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be

produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.

(2) A person who commits an offence under this Article is liable on 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) Where a person is convicted of an offence under this Article, the States may by Resolution declare that he is ineligible to hold office as a People's Deputy, or as a member of a States' Committee who is not a People's Deputy, until the next General Election for the office of People's Deputy; and where the States makes a Resolution under this subparagraph in respect of such a person –

- (a) that person may not hold such office for that period, as set out in the Resolution of the States, and
- (b) if that person is currently holding office as a People's Deputy, that office shall immediately be vacated."

33. In Article 49, insert the following definitions in the appropriate place–

""**Central Returning Officer**": see Article 37,"

""**Deputy Polling Station Officer**": see Article 37,"

""**donation**" and related terms: see the Third Schedule,"

""**ordinarily resident**": see Article 27(5),"

""**Polling Station Officer**": see Article 37," and

"Published Electoral Roll": see Article 34A(1)".

34. For the heading of Part V substitute "Election of Parish Officials".

35. Renumber the text of Article 53 as paragraph (1) and after paragraph (1) insert –

"(2) The States may by Ordinance make such further provision as may be necessary or expedient to modify the application of the provisions of Part IV of this Law to elections to the offices of Constable and Douzenier."

36. After Article 61 insert –

"Election of other Parish officials."

61A. (1) Subject to the provisions of paragraph (2), the procedure for electing parochial officers other than Constables and Douzeniers (including the elected members of committees established by Parishes) shall be that prescribed, in such manner as it thinks fit, by the Douzaine of the Parish concerned.

(2) Before prescribing a procedure under paragraph (1), the Douzaine of the Parish concerned shall consult Her Majesty's Procureur."

37. After Article 72A, insert –

"General Election Observers.

72B. (1) The States' Assembly and Constitution Committee may, after consultation with the Policy & Resources Committee, appoint one or more observers of a General Election.

(2) The States' Assembly and Constitution Committee shall, as soon as possible after making an appointment under subparagraph (1), present a report to the States of Deliberation informing the States of the appointment.

(3) An observer appointed under subparagraph (1) shall have the right –

- (a) to be provided by the Registrar-General with a copy of the Published Electoral Roll,
- (b) to be present in any polling station –

- (i) while preparations are being made to open the poll,
 - (ii) during the poll, and
 - (c) to be present during any count of the votes cast in the election.
- (4) When exercising a right conferred by paragraph (3) an observer must not –
 - (a) attempt to influence a voter, or
 - (b) do anything to compromise the secrecy or integrity of voting in an election.
- (5) When exercising a right conferred by paragraph (3) an observer must comply with any direction given to him by the Central Returning Officer, a Polling Station Officer or a Deputy Polling Station Officer.
- (6) A person who contravenes paragraph (4) or (5) is guilty of an offence and is liable on conviction to a fine not exceeding level 5 on the Uniform Scale.
- (7) The States may by Ordinance make further provision in relation to observers appointed under this Article.

Costs of elections.

72C. The States shall bear the costs of the election of Jurats and of

elections to the office of People's Deputy, and each Parish shall bear the costs of the election of its officers.".

38. Article 74 (Limitation of the application of the Secret Ballot Laws) is repealed.

39. After Article 77 (Savings) insert –

"Power to amend Third and Fourth Schedules by Ordinance.

77A. The States may by Ordinance amend the Third and Fourth Schedules to this Law.

General provisions as to Ordinances.

77B. (1) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
- (b) may contain such consequential, incidental, supplementary, savings and transitional provision as may appear to be necessary or expedient, including provision amending any enactment.

(2) Any power conferred by this Law to make an Ordinance may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject

to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

General provisions as to regulations.

77C. (1) Any regulations under this Law-

(a) may be amended or repealed by subsequent regulations hereunder,

(b) may contain such consequential, incidental, supplemental and transitional provision as may

appear to the States' Assembly and Constitution Committee or the Committee for Home Affairs (as the case may be) to be necessary or expedient,

- (c) shall be laid before a meeting of the States of Deliberation as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(2) Any power conferred by this Law to make regulations may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions."

40. In Article 78, after "the States' Assembly and Constitution Committee" insert "and the Committee for Home Affairs".

41. The First Schedule (Allocation of Deputies between Electoral Districts) is repealed.

42. The schedule set out in Schedule 1 to this Law shall be inserted as the Third Schedule.

43. The schedule set out in Schedule 2 to this Law shall be inserted as the Fourth Schedule.

Amendment of the 1972 Law.

44. (1) The Reform (Amendment) (Guernsey) Law, 1972^e is amended

^e Ordres en Conseil Vol. XXIII, p. 476; as amended by Ordres en Conseil Vol. XXVI, p. 255; Vol. XXXIV, p. 397; Vol. XXXVI, p. 478; Vol. XXXVIII, p. 295; Order in Council No. XIII of 2003; No. VII of 2010; Ordinance No. III of 2004; No. LI of 2006; and No. XIII of 2012.

as follows.

(2) After section 15A (1), insert –

"(1A) Without prejudice to the generality of subsection (1), an Ordinance under that subsection may make provision in relation to voting at polling stations before the date appointed for the holding of the election in question, and may provide for a person to vote in an election at a polling station outside the Parish in respect of which his name appears on the Electoral Roll, and the principal Law shall be construed accordingly."

Power to make transitional, savings and consequential provisions by Ordinance.

45. (1) The States of Deliberation may by Ordinance make any transitional, savings or consequential provisions they think fit in connection with the commencement of any provision of this Law.

(2) Without limiting subsection (1), an Ordinance under that subsection may –

(a) repeal, revoke or amend any provision of any enactment that is inconsistent with any provision of this Law, and

(b) make any other consequential amendments to any enactment that the States of Deliberation think fit.

(3) In this section, "enactment" excludes an Act of Parliament that applies or extends to the Bailiwick.

Repeals.

46. (1) Section 1(4) of the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978^f is repealed.

(2) The Loi relative au Scrutin Secret, 1899^g is repealed.

(3) The Loi modifiant la Loi relative au Scrutin Secret, 1911^h, the Loi modifiant la Loi relative au Scrutin Secret, 1917ⁱ and the Loi Supplémentaire à la Loi relative au Scrutin Secret, 1925^j are repealed.

Citation.

47. This Law may be cited as the Reform (Guernsey) (Amendment) (No.2) Law, 2019.

Commencement.

48. 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.

^f Ordres en Conseil Vol. XXVI, p. 264; there are amendments not relevant to this enactment.

^g Ordres en Conseil Vol. III, p. 175; as amended by Ordres en Conseil Vol. IV, p. 392; Vol. V, p. 444; Vol. VII, p. 310; No. XXXIV, p. 397; Vol. XXXVI, p. 478; Vol. XXXVIII, p. 150; Vol. XXXVIII, p. 295; and Order in Council No. XIII of 2003.

^h Ordres en Conseil Vol. IV, p. 392.

ⁱ Ordres en Conseil Vol. V, p. 444.

^j Ordres en Conseil Vol. VII, p. 310.

SCHEDULE 1

THIRD SCHEDULE

DONATIONS

Money.

1. (1) A gift of money is a donation if –
 - (a) it is made at any time before the date of the election and the giver signifies, expressly or otherwise, that the money is intended for use to pay the recipient's election expenses, or
 - (b) it is made after the time and date appointed by the Presiding Officer of the States for the closing of nominations under Article 32(1), and is either made anonymously or the giver does not signify the intended use of the money.
- (2) A loan of money is a donation if –
 - (a) it is made either at no cost to the recipient or on terms below the commercial rate for the loan, and
 - (b) it is made –

- (i) at any time before the election and the lender signifies, expressly or otherwise, that the loan is intended for use to pay the recipient's election expenses, or
- (ii) after the time and date appointed by the Presiding Officer of the States for the closing of nominations under Article 32(1), and is either made anonymously or the lender does not signify the intended use of the loan.

(3) A gift or loan of money is made at the time when the money is given or lent to the recipient or, if earlier, the time when the giver or lender informs the recipient of his intention to make the gift or loan.

Goods and services.

2. (1) A supply of goods (including by way of loan or rental) or a supply of services is a donation if -

- (a) it is made free of charge or at a discount to the open market value of or rate for the supply of the goods or services, and
- (b) it is made -
 - (i) at any time before the election, and the person making the supply signifies, expressly or otherwise, that the goods or services are intended for use to promote or procure the

candidate's election,

- (ii) after the time and date appointed by the Presiding Officer of the States for the closing of nominations under Article 32(1), and is either made anonymously or the person making the supply does not signify the intended use of the goods or services.

(2) A supply of goods or services is made at the time when the goods or services are provided to the recipient.

Value attributable to loans, goods and services.

3. (1) The value of a donation that is a loan of money is the amount equal to the difference between the cost to the recipient if the loan had been made on commercial terms, and the actual cost to the recipient.

(2) The value of a donation of goods is the amount equal to the difference between the open market value of the goods and the actual cost to the recipient.

(3) The value of a donation of the use of goods is the amount equal to the difference between the open market rate for the use of the goods and the actual cost to the recipient.

(4) The value of a donation of the supply of services is the amount equal to the difference between the open market value rate for their supply and the actual cost to the recipient.

Exceptions: States Committees, and services of an individual provided without charge.

4. (1) If a Committee of the States disseminates information about or on behalf of candidates in an election on the same terms to each candidate, that Committee is not making a donation.

(2) If an individual is providing his own services, that individual is not making a donation if those services are provided -

- (a) as a volunteer,
- (b) without charge, and
- (c) otherwise than in the course of the individual's employment, trade, profession or any other business.

Exceptions: newspapers and broadcasts.

5. (1) Subject to subparagraph (2), the publication of any matter relating to an election –

- (a) in a newspaper or periodical circulating in Guernsey,
- (b) in a programme broadcast by a television or radio service provider, or
- (c) on a website as part of the news service of a television or radio service provider or news agency,

is not a donation.

(2) Subparagraph (1) does not apply to an advertisement.

(3) Where the publisher of a newspaper or periodical circulating in Guernsey also publishes an edition of the newspaper or periodical on the internet, the reference in subparagraph (1)(a) to a newspaper or periodical includes the edition of it published on the internet.

(4) Where a television or radio service provider makes a programme accessible by streaming or downloading from a website, the reference in subparagraph (1)(b) to the broadcast programme includes the programme as it may be accessed from a website."

SCHEDULE 2

FOURTH SCHEDULE

POLITICAL PARTIES

Political parties must be registered.

1. (1) A political party may not support or endorse any candidate for election to the office of People's Deputy unless it is registered under this Schedule.

(2) For the purposes of this Law, a "**political party**" means a free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections.

Application for registration as a political party.

2. (1) A political party that wishes to be registered under this Schedule shall apply to the Greffe.

(2) A political party that wishes to be registered under this Schedule must have a leader, treasurer and secretary, all of whom must be natural persons; and for the avoidance of doubt, a person may hold more than one such office.

(3) Subject to subparagraph (4), an application under subparagraph (1) shall be in such form as the Greffe may from time to time direct.

(4) An application under subparagraph (1) must contain the following information in respect of the political party –

- (a) its name, and any abbreviation of its name,
- (b) its emblem (if any),
- (c) the full names of its leader, treasurer and secretary and any other office-holders,
- (d) its constitution (setting out information relating to the purpose and structure of the party including but not limited to its aims and objectives, one of which must be the support or endorsement of candidates for the office of People's Deputy, and its membership rules),
- (e) its most recent financial accounts, prepared in line with generally accepted accounting standards, and
- (f) its postal address in Guernsey,

and must be signed by at least two members of the party who are inscribed on the Electoral Roll.

(5) An application under subparagraph (1) must be accompanied by such fee not exceeding £200 as the States' Assembly and Constitution Committee may prescribe by regulations.

Determination of application for registration as a political party.

3. (1) The Greffier shall determine applications for registration as a political party.

(2) Subject to subparagraph (3), the Greffier must grant an application for registration as a political party if he is satisfied that the application complies with the requirements set out in paragraph 2.

(3) The Greffier may not grant an application for registration as a political party if in his opinion the name, any abbreviation of the name, or emblem of the political party is –

- (a) offensive or otherwise inappropriate, or
- (b) the same as the name, abbreviation or emblem of any other organisation, or of such similarity to the name, abbreviation or emblem of another organisation that it might reasonably be confused with it.

The Register of Political Parties.

4. (1) The Greffier shall establish and maintain a Register of Political Parties (in this Schedule, "**the Register**").

(2) The Register shall be kept in such form as the Greffier thinks fit, including in electronic form only.

(3) Where the Greffier grants an application for registration of a political party, he must register that party by entering in the Register the information set out at subparagraphs 2(4)(a) – (f) in respect of that party.

Public inspection of the Register and other documents.

5. A person may inspect the Register, and any document filed pursuant to a requirement imposed by this Schedule, at the Greffe during normal office hours.

Change of name or emblem of registered political party.

6. (1) A registered political party may apply to the Greffier for the name, any abbreviation of that name, or the emblem of a registered political party to be changed.

(2) An application under subparagraph (1) shall be signed by the leader, treasurer or secretary of the party and accompanied by evidence that the decision to make the change was made in accordance with the party's constitution.

(3) An application under subparagraph (1) must be accompanied by such fee not exceeding £100 as the States' Assembly and Constitution Committee may prescribe by regulations.

(4) The Greffier must grant an application under subparagraph (1) if he is satisfied that the application complies with the requirements set out in paragraphs (2) and (3) and he is not of the opinion set out in paragraph 3(3).

Change of other particulars of registered political party.

7. (1) A registered political party must notify the Greffier in writing of a change to any of the following –

- (a) its constitution,
- (b) its leader, treasurer or secretary, or
- (c) its postal address.

(2) A notification under paragraph (1) must be made within ten working days of the change in question occurring, and shall be signed by the leader, treasurer or secretary of the political party and accompanied by evidence that the decision to make the change was made in accordance with the party's constitution.

(3) Where the change was to the political party's constitution, the notification must be accompanied by a copy of the new constitution.

(4) On receipt of a notification under this paragraph, if he is satisfied that it complies with subparagraphs (2) and (3), the Greffier must enter the notified particulars in the Register.

Accounts.

8. During the month of February each year the treasurer of a registered political party must file with the Greffier financial accounts, for the previous calendar year (or for the part of the previous calendar year it has been a registered political party, if shorter), prepared in line with generally accepted accounting standards.

Removal from the Register.

9. (1) The Greffier shall remove a political party from the Register –

- (a) upon an application being made to the Greffier that is signed by the leader and one other office-holder of the party, and that is accompanied by evidence that the decision to apply for removal from the Register was made in accordance with the party's constitution,
- (b) of his own volition if he is satisfied that –
 - (i) the party has not supported or endorsed a candidate for election to the office of People's Deputy at either of the two previous general Elections,
 - (ii) the party has failed to comply with paragraphs 7 (Change of other particulars of registered political party) or 8 (Accounts), or
 - (iii) the party has ceased to exist or is otherwise no longer functioning as a political party.

(2) Unless he is satisfied that the party has ceased to exist, the Greffier must notify the party at least two months before removing it from the Register under subparagraph (1)(b).

Appeals.

- 10. (1) A person aggrieved by a decision of the Greffier to –
 - (a) refuse to grant an application to register a political party,

- (b) refuse to grant an application to change the name or emblem of a registered political party, or
- (c) remove a political party from the Register.

may appeal to the Court against the decision.

(2) The grounds of an appeal under this Article are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this section shall be instituted -

- (a) within a period of 28 days immediately following the date of the notice of the Greffier's decision, and
- (b) by summons served on the Greffier stating the grounds and material facts on which the appellant relies.

(4) The Greffier may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

(a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just.

The provisions of this subparagraph are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007.

(5) On an appeal under this paragraph the Court may -

(a) set the decision of the Greffier aside and, if the Court considers it appropriate to do so, remit the matter to the Greffier with such directions as the Court thinks fit, or

(b) confirm the decision.

(6) An appeal from a decision of the Court under this Article lies to the Court of Appeal on a question of law.

(7) In this paragraph "**the Court**" means the Royal Court sitting as

an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats."

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

THE EXTRADITION (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 Extradition (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 Law makes appropriate provision equivalent to the Category 2 procedures in the Extradition Act 2003 ("the 2003 Act"). This is explained further below.

Extradition from the Bailiwick is currently governed by Parts I to V of the Extradition Act 1989 ("the 1989 Act"), which is expressed as having direct effect within the Crown Dependencies as if they were part of the United Kingdom. The 1989 Act in its application to the UK was repealed and replaced by the 2003 Act, which did not apply to the Crown Dependencies. At the same time the 1989 Act was preserved in its application to the Crown Dependencies until its replacement either by domestic extradition legislation or by the extension of the 2003 Act.

The 2003 Act differs from the 1989 Act in a number of significant ways. As well as bringing the extradition regime up to date with international developments, the procedures of the 2003 Act are more streamlined and have reduced the risk of an otherwise valid extradition request being refused for purely technical reasons.

Under the 2003 Act, there are three extradition regimes, as follows:

1. extradition under the European Arrest Warrant (Category 1) – this is applicable to all EU member states and is a backing of warrants/surrender system rather than extradition per se. In broad terms, if the UK receives an arrest warrant from another member state and is satisfied that it is a valid warrant, it must give effect to it without going into the merits;

2. extradition to countries based on information only (Category 2 – specially designated countries) – this is where a hearing on the merits is required but the bar is low as only information, not evidence, is required in support of the extradition request. This applies either because it is required under the terms of an extradition treaty with the country in question (e.g. the USA) or because the country is a signatory to the Council of Europe convention on extradition (as that convention requires signatories to take this approach to one another); and
3. extradition to countries based on evidence (Category 2 – other designated countries) - this is where a hearing on the merits is required and must be supported by evidence.

As a non-EU member state Guernsey could only implement the two types of Category 2 regime set out in 2 and 3 above.

In order to align with the United Kingdom it has been necessary to replicate (at Schedule 1, which is amendable by Ordinance under section 5) the United Kingdom listings for the two types of Category 2 regime and also treat all EU member states as information-only countries (other than the United Kingdom itself, as that is already covered by existing separate and long-standing legislation).

Under the Law, jurisdiction is vested in the Magistrate's Court at first instance, which is consistent with the approach in Jersey and the United Kingdom, and H.M. Procureur has the functions assigned to a prosecutor in the 2003 Act, which is consistent with the approach taken in Jersey.

Part I of the Law is concerned with introductory provisions, including in relation to conduct that constitutes an extradition offence, and the designated territories. Parts II and III deal with extradition and re-extradition from the Bailiwick, including appeals, and Part IV with extradition to the Bailiwick. Part V is concerned with relevant police powers, including powers of search and seizure, and Part VI makes miscellaneous and final provision, including in respect of transferring persons from Alderney or Sark to Guernsey.

PROJET DE LOI

ENTITLED

The Extradition (Bailiwick of Guernsey) Law, 2019

ARRANGEMENT OF SECTIONS

PART I INTRODUCTORY PROVISIONS

1. Application of Law.
2. Extradition offences – persons not sentenced.
3. Extradition offences – persons sentenced.
4. Military offences, and meaning of "conduct".
5. Designated territories.

PART II EXTRADITION FROM THE BAILIWICK

6. Extradition request and certificate.
7. Arrest warrant following extradition request.
8. Person arrested under section 7.
9. Provisional warrant.
10. Person arrested under provisional warrant.
11. Date of hearing on arrest under section 7.
12. Date of hearing on arrest under provisional warrant.
13. General provisions as to extradition hearing.
14. Person charged with offence in the Bailiwick before extradition hearing.
15. Person serving sentence in the Bailiwick before extradition hearing.
16. Initial stages of extradition hearing.
17. Bars to extradition.
18. Rule against double jeopardy.
19. Extraneous considerations.
20. Passage of time.
21. Hostage-taking considerations.

22. Forum.
23. Effect of Procureur's certificates on forum proceedings.
24. Procureur's certificates.
25. Questioning of Procureur's certificate.
26. Case where person has not been convicted.
27. Case where person has been convicted.
28. Conviction in absentia in designated territory.
29. Consideration of human rights.
30. Deferral by Magistrate's Court where person charged with offence in the Bailiwick.
31. Deferral by Magistrate's Court where person serving sentence in the Bailiwick.
32. Other requests for extradition.
33. Consideration of physical or mental condition.
34. Sending of case to Her Majesty's Procureur.

Functions of Her Majesty's Procureur

35. Her Majesty's Procureur's consideration of case.
36. Death penalty.
37. Speciality.
38. Earlier extradition to the Bailiwick from another territory.
39. Deferral: person charged with offence in the Bailiwick.
40. Deferral: person serving sentence in the Bailiwick.
41. Time limit for order for extradition or discharge.
42. The appropriate day.
43. Information to be given by Her Majesty's Procureur.
44. Making of order for extradition or discharge.

Appeals

45. Appeal to Royal Court against sending of case to Her Majesty's Procureur.
46. Royal Court's powers on appeal against sending of case to Her Majesty's Procureur.
47. Appeal to Royal Court against discharge by Magistrate's Court.
48. Royal Court's powers on appeal against discharge by Magistrate's Court.
49. Detention pending conclusion of appeal against discharge by Magistrate's Court.
50. Appeal to Royal Court against extradition order by Her Majesty's Procureur.
51. Royal Court's powers on appeal against extradition order by Her Majesty's Procureur.
52. Appeal to Royal Court against discharge by Her Majesty's Procureur.
53. Royal Court's powers on appeal against discharge by Her Majesty's

- Procureur.
- 54. Detention pending conclusion of appeal against discharge by Her Majesty's Procureur.
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PROJET DE LOI

ENTITLED

The Extradition (Bailiwick of Guernsey) Law, 2019

THE STATES, in pursuance of their Resolution of the 21st day of September 2016^a, 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

INTRODUCTORY PROVISIONS

Application of Law.

1. (1) This Law shall apply for the purposes of -
 - (a) every request for extradition or re-extradition that is received in the Bailiwick on or after the day on which this Law comes into force, and
 - (b) every request for extradition to the Bailiwick that is made by Her Majesty's Procureur on or after the day on which this Law comes into force.
- (2) For the purposes of this Law, it is immaterial whether an

^a Article I of Billet d'État No. XXIII of 2016.

extradition offence is committed before or after the commencement of this Law.

Extradition offences – persons not sentenced.

2. (1) This section sets out whether a person's conduct constitutes an extradition offence in a case where the person -

- (a) is accused in a designated territory of the commission of an offence constituted by the conduct, or
- (b) has been convicted in that territory of an offence constituted by the conduct but not sentenced for it.

(2) The conduct constitutes an extradition offence in relation to the designated territory if -

- (a) the conduct occurs in the designated territory,
- (b) the conduct would constitute an offence under the laws of the Bailiwick, punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment, if it occurred in the Bailiwick, and
- (c) the conduct is so punishable under the law of the designated territory.

(3) The conduct also constitutes an extradition offence in relation to the designated territory if -

- (a) the conduct occurs outside the designated territory,
- (b) the conduct is punishable under the law of the designated territory with imprisonment or another form of detention for a term of 12 months or a greater punishment, and
- (c) in corresponding circumstances, equivalent conduct would constitute an extra-territorial offence under the laws of the Bailiwick.

(4) The conduct also constitutes an extradition offence in relation to the designated territory if –

- (a) the conduct occurs outside the designated territory,
- (b) no part of the conduct occurs in the Bailiwick,
- (c) the conduct constitutes, or if committed in the Bailiwick would constitute, an offence mentioned in subsection (5), and
- (d) the conduct is punishable under the law of the designated territory with imprisonment or another form of detention for a term of 12 months or a greater punishment.

(5) The offences to which subsection (4) refers are –

- (a) an offence that if committed in the Bailiwick would be punishable as an offence under section 45 of the International Criminal Court (Bailiwick of Guernsey) Law, 2019 (genocide, crimes against humanity and war crimes),
- (b) an offence that if committed in the Bailiwick would be punishable as an offence under section 46 of that Law (conduct ancillary to genocide, etc. committed outside the jurisdiction), and
- (c) any offence that is punishable in the Bailiwick as an offence under section 1 of the Geneva Conventions Act 1957^b as it applies to the Bailiwick^c (relating to grave breaches of scheduled conventions).

Extradition offences – persons sentenced.

3. (1) This section sets out whether a person's conduct constitutes an extradition offence in a case where the person -

- (a) has been convicted in a designated territory of the commission of an offence constituted by the conduct, and
- (b) has been sentenced for the offence.

^b An Act of Parliament 1957 c. 52.

^c The Geneva Conventions Act 1957 is extended to the Bailiwick by the Geneva Conventions Act (Guernsey) Order 1966 (U.K.SI 1966 No. 948) subject to the exceptions and modifications specified in the Schedule to that Order.

(2) The conduct constitutes an extradition offence in relation to the designated territory if -

- (a) the conduct occurs in the designated territory,
- (b) the conduct would constitute an offence under the laws of the Bailiwick, punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment, if it occurred in the Bailiwick, and
- (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the designated territory in respect of the conduct.

(3) The conduct also constitutes an extradition offence in relation to the designated territory if -

- (a) the conduct occurs outside the designated territory,
- (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the designated territory in respect of the conduct, and
- (c) in corresponding circumstances, equivalent conduct would constitute an extra-territorial offence under the

laws of the Bailiwick punishable as mentioned in subsection (2)(b).

(4) The conduct also constitutes an extradition offence in relation to the designated territory if –

- (a) the conduct occurs outside the designated territory,
- (b) no part of the conduct occurs in the Bailiwick,
- (c) the conduct constitutes, or if committed in the Bailiwick would constitute, an offence mentioned in subsection (5),
- (d) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the designated territory in respect of the conduct.

(5) The offences to which subsection (4) refers are –

- (a) an offence that if committed in the Bailiwick would be punishable as an offence under section 45 of the International Criminal Court (Bailiwick of Guernsey) Law, 2019 (genocide, crimes against humanity and war crimes),
- (b) an offence that if committed in the Bailiwick would be punishable as an offence under section 46 of that Law

(conduct ancillary to genocide, etc. committed outside the jurisdiction), and

- (c) any offence that is punishable in the Bailiwick as an offence under section 1 of the Geneva Conventions Act 1957 as it applies to the Bailiwick (relating to grave breaches of scheduled conventions).

Military offences, and meaning of "conduct".

4. If conduct constitutes an offence under the military law of the designated territory, but does not constitute an offence under the general criminal law of the Bailiwick, it does not constitute an extradition offence under section 2 or 3; and references in those sections to "conduct" (except in the expression "equivalent conduct") are to the conduct specified in the request for the person's extradition.

Designated territories.

5. (1) A designated territory is a territory that is specified in Schedule 1.

(2) A designated territory of the first category is a territory that is specified in Part 1 of Schedule 1.

(3) A designated territory of the second category is a territory that is specified in Part 2 of Schedule 1.

(4) A designated territory may be specified in Part 1 of Schedule 1 for some purposes of this Law and specified in Part 2 of that Schedule for other purposes of this Law and references to a designated territory of the first category or the second category shall be construed accordingly.

- (5) The States may by Ordinance –
- (a) amend Schedule 1 by specifying any additional territory in Part 1 or Part 2 of that Schedule,
 - (b) amend Schedule 1 by specifying any additional territory in Part 1 of that Schedule for some purposes of this Law and in Part 2 of that Schedule for other purposes of this Law,
 - (c) amend Schedule 1 by varying the description of any territory that is specified in either Part 1 or Part 2 of that Schedule, including (but not limited to) by specifying it in Part 1 of that Schedule for some purposes of this Law and in Part 2 of that Schedule for other purposes of this Law,
 - (d) amend Schedule 1 by deleting any territory from either or both of those Parts, and
 - (e) make special provision, whether by amendment to Schedule 1 or otherwise, in relation to the extradition and re-extradition of persons to and from Jersey and the Isle of Man.

PART II

EXTRADITION FROM THE BAILIWICK

Extradition request and certificate.

6. (1) If Her Majesty's Procureur receives a valid request for the extradition to a designated territory of a person who is in the Bailiwick, Her Majesty's Procureur shall issue a certificate under this section.

(2) However, Her Majesty's Procureur may refuse to issue a certificate under this section if -

- (a) Her Majesty's Procureur has power under section 75 to order that proceedings on the request be deferred,
- (b) the person whose extradition is requested has been recorded by Her Majesty's Procureur as a refugee within the meaning of the Refugee Convention; or
- (c) the person whose extradition is requested has been granted leave to enter or remain in the United Kingdom on the ground it would be a breach of Article 2 or 3 of the Human Rights Convention to remove the person whose extradition is requested to the territory to which extradition is requested.

(3) A request for a person's extradition is valid if it contains a statement -

- (a) that the person is accused in the designated territory of the commission of an offence specified in the request and the request is made with a view to the person's arrest and extradition to the designated territory for

the purpose of being prosecuted for the offence, or

- (b) that the person is alleged to be unlawfully at large after conviction by a court in the designated territory of an offence specified in the request,

and the request is made in the approved way.

(4) A request for extradition to a designated territory that is a British overseas territory is made in the approved way if it is made by or on behalf of the person administering the designated territory.

(5) If the Hong Kong Special Administrative Region of the People's Republic of China is a designated territory, a request for extradition to it is made in the approved way if it is made by or on behalf of the government of the Region.

(6) A request for extradition to any other designated territory is made in the approved way if it is made by -

- (a) an authority of the designated territory whom Her Majesty's Procureur believes to have the function of making requests for extradition in that designated territory, or
- (b) a diplomatic or consular representative of the designated territory.

(7) A certificate under this section shall certify that the request is

made in the approved way.

(8) If a certificate is issued under this section, Her Majesty's Procureur shall send -

(a) the request, and

(b) the certificate,

to the Magistrate's Court.

(9) At any time after Her Majesty's Procureur has issued a certificate under this section, he or she must not consider whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Law.

Arrest

Arrest warrant following extradition request.

7. (1) This section applies if Her Majesty's Procureur sends documents to the Magistrate's Court under section 6.

(2) If the Judge has reasonable grounds for believing-

(a) that the offence in respect of which extradition is requested is an extradition offence, and

(b) that there is evidence to which subsection (3) refers,

the Magistrate's Court may issue a warrant for the arrest of the person whose extradition is requested.

(3) The evidence to which this section refers is -

(a) if the person whose extradition is requested is accused of the commission of the offence, evidence that would justify the arrest of a person accused of the offence within the Bailiwick, or

(b) if the person whose extradition is requested is alleged to be unlawfully at large after conviction of the offence, evidence that would justify the arrest of a person unlawfully at large after conviction of the offence within the Bailiwick.

(4) However, if the designated territory to which extradition is requested is a designated territory of the first category, subsections (2) and (3) shall have effect as if references in them to evidence were references to information.

(5) A warrant may be executed by any officer of police.

(6) A warrant may be executed whether or not, at the time of the arrest, the warrant or a copy of it is in the possession of the officer of police executing it.

Person arrested under section 7.

8. (1) This section applies if a person is arrested under a warrant issued under section 7.

(2) As soon as practicable after his or her arrest, a copy of the warrant shall be given to the person.

(3) Subject to subsection (4) and section 117 (transfer from Alderney or Sark to Guernsey), the arrested person shall be brought as soon as practicable before the Magistrate's Court.

(4) Subsection (3) does not apply if Her Majesty's Procureur decides under section 75 that the request for the person's extradition is not to be proceeded with.

(5) If subsection (2) is not complied with, and the person applies to the Magistrate's Court to be discharged, the Magistrate's Court may order that the person be discharged.

(6) If subsection (3) is not complied with, and the person applies to the Magistrate's Court to be discharged, the Magistrate's Court shall order that the person be discharged.

(7) As soon as practicable after the person first appears or is brought before the Magistrate's Court -

- (a) the Judge shall inform the person of the contents of the request for extradition,
- (b) the Judge shall inform the person that he or she may consent to being extradited to the designated territory to which the person's extradition is requested,

- (c) the Judge shall explain to the person the effect of consent, and the procedure that will apply if the person gives consent, and
- (d) the Judge shall also explain to the person that consent must be given in writing, and that it is irrevocable.

(8) The Magistrate's Court, when the person first appears or is brought before the Magistrate's Court, shall remand the person in custody or on bail.

(9) If the Magistrate's Court remands the person in custody, the Magistrate's Court may later grant bail to the person.

Provisional warrant.

9. (1) This section applies if the Magistrate's Court is satisfied on information in writing and on oath that a person to whom subsection (2) refers -

- (a) is or is believed to be in the Bailiwick, or
- (b) is or is believed to be on his or her way to the Bailiwick.

(2) This subsection refers to -

- (a) a person who is accused in a designated territory of the commission of an offence, or
- (b) a person who is alleged to be unlawfully at large after

conviction of an offence by a court in a designated territory.

(3) The Magistrate's Court may issue a warrant for the arrest of the person (a provisional warrant) if the Judge has reasonable grounds for believing

-

(a) that the offence of which the person is accused or has been convicted is an extradition offence, and

(b) that there is written evidence to which subsection (4) refers.

(4) The evidence to which this section refers is -

(a) if the person in respect of whom the warrant is sought is accused of the commission of the offence, evidence that would justify the arrest of a person accused of the offence within the Bailiwick, or

(b) if the person in respect of whom the warrant is sought is alleged to be unlawfully at large after conviction of the offence, evidence that would justify the arrest of a person unlawfully at large after conviction of the offence within the Bailiwick.

(5) However, if the designated territory to which extradition is requested is a designated territory of the first category, subsections (3) and (4) shall have effect as if references in them to evidence were references to information.

(6) A provisional warrant may be executed by any officer of police.

(7) A provisional warrant may be executed whether or not, at the time of the arrest, the warrant or a copy of it is in the possession of the officer of police executing it.

Person arrested under provisional warrant.

10. (1) This section applies if a person is arrested under a provisional warrant.

(2) As soon as practicable after his or her arrest, a copy of the warrant shall be given to the person.

(3) Subject to subsection (4) and section 117, the arrested person shall be brought as soon as practicable before the Magistrate's Court.

(4) Subsection (3) does not apply in a case where Her Majesty's Procureur has received a valid request for the person's extradition, if Her Majesty's Procureur decides under section 75 that the request is not to be proceeded with.

(5) If subsection (2) is not complied with, and the person applies to the Magistrate's Court to be discharged, the Magistrate's Court may order that the person be discharged.

(6) If subsection (3) is not complied with, and the person applies to the Magistrate's Court to be discharged, the Magistrate's Court shall order that the person be discharged.

(7) As soon as practicable after the person first appears or is brought before the Magistrate's Court -

- (a) the Judge shall inform the person that he or she is accused of the commission of an offence in a designated territory, or that he or she is alleged to be unlawfully at large in a designated territory,
- (b) the Judge shall inform the person that he or she may consent to being extradited to the designated territory in which the person is accused of the commission of an offence or is alleged to have been convicted of an offence,
- (c) the Judge shall explain to the person the effect of consent, and the procedure that will apply if the person gives consent, and
- (d) the Judge shall also explain to the person that consent must be given in writing, and that it is irrevocable.

(8) The Magistrate's Court, when the person first appears or is brought before the Magistrate's Court, shall remand the person in custody or on bail.

(9) If the Magistrate's Court remands the person in custody, the Magistrate's Court may later grant bail to the person.

(10) The Magistrate's Court shall order that the person be

discharged if the documents to which section 6(8) refers are not received by the Magistrate's Court -

- (a) within 45 days commencing on the day on which the person was arrested, or
- (b) within any longer period that is specified, by regulations, in respect of that designated territory.

The extradition hearing

Date of hearing on arrest under section 7.

11. (1) When a person arrested under a warrant issued under section 7 first appears or is brought before the Magistrate's Court, the Magistrate's Court shall fix a date on which the extradition hearing is to begin.

(2) The date fixed under subsection (1) shall not be later than the end of the period of 2 months commencing on the date on which the person first appears or is brought before the Magistrate's Court.

(3) If before the date fixed under subsection (1) (or under this section) a party to the proceedings applies to the Magistrate's Court for a later date to be fixed, and the Judge believes that it is in the interests of justice to do so, the Magistrate's Court may fix a later date.

(4) An application under subsection (3) may be made on more than one occasion, and the Magistrate's Court may exercise its power under that section on any such application.

(5) If the extradition hearing does not begin on or before the date fixed under this section, and the person applies to the Magistrate's Court to be discharged, the Magistrate's Court shall order that the person be discharged.

Date of hearing on arrest under provisional warrant.

12. (1) When -

- (a) a person is arrested under a provisional warrant, and
- (b) the documents to which section 6(8) refers are received by the Magistrate's Court within the period required by section 10(10),

the Magistrate's Court shall fix a date on which the extradition hearing is to begin.

(2) The date fixed under subsection (1) shall not be later than the end of the period of 2 months commencing on the date on which the Magistrate's Court receives the documents.

(3) If, before the date fixed under subsection (1) (or under this section), a party to the proceedings applies to the Magistrate's Court for a later date to be fixed, and the Judge believes that it is in the interests of justice to do so, the Magistrate's Court may fix a later date.

(4) An application under subsection (3) may be made on more than one occasion, and the Magistrate's Court may exercise the power under that section on any such application.

(5) If the extradition hearing does not begin on or before the date

fixed under this section, and the person applies to the Magistrate's Court to be discharged, the Magistrate's Court shall order that the person be discharged.

General provisions as to extradition hearing.

13. (1) At the extradition hearing the Magistrate's Court shall have the same powers (as nearly as may be) as it would have if the proceedings were a trial before the Magistrate's Court of the person whose extradition is requested.

(2) If the Magistrate's Court adjourns the proceedings, it shall remand the person in custody or on bail.

(3) If the Magistrate's Court remands the person in custody, it may later grant bail to the person.

Person charged with offence in the Bailiwick before extradition hearing.

14. (1) This section applies if –

- (a) a person has been brought before the Magistrate's Court under section 8(3) or 10(3) but the extradition hearing has not begun, and
- (b) the court is informed that the person is charged with an offence in the Bailiwick.

(2) The Magistrate's Court must order further proceedings in respect of the extradition to be adjourned until one of these occurs –

- (a) the charge is disposed of,

- (b) the charge is withdrawn,
- (c) proceedings in respect of the charge are discontinued.

(3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the court may order further proceedings in respect of the extradition to be adjourned until the person is released from detention pursuant to the sentence (whether on licence or otherwise).

Person serving sentence in the Bailiwick before extradition hearing.

15. (1) This section applies if -
- (a) a person has been brought before the Magistrate's Court under section 8(3) or 10(3) but the extradition hearing has not begun, and
 - (b) the court is informed that the person is in custody serving a sentence of imprisonment or another form of detention in the Bailiwick.

(2) Where this section applies the court may order further proceedings in respect of the extradition to be adjourned until the person is released from detention pursuant to the sentence (whether on licence or otherwise).

Initial stages of extradition hearing.

16. (1) This section applies if a person who is alleged to be the person whose extradition is requested appears or is brought before the Magistrate's Court for the extradition hearing.

- (2) The Magistrate's Court shall decide whether the documents

sent to the Magistrate's Court under section 6 consist of or include any of the following -

- (a) the documents to which section 6(8) refers,
- (b) particulars of the person whose extradition is requested,
- (c) particulars of the offence specified in the request,
- (d) in the case of a person accused of an offence, a warrant for the person's arrest issued in the designated territory, or a judicial document issued in that designated territory and authorising his or her arrest, and
- (e) in the case of a person alleged to be unlawfully at large after conviction for an offence, a certificate of the conviction, and of the sentence (if the person has been sentenced), issued in the designated territory.

(3) If the Magistrate's Court decides in the negative the question in subsection (2), the Magistrate's Court shall order that the person be discharged.

(4) If the Magistrate's Court decides that question in the affirmative, the Magistrate's Court shall decide -

- (a) whether the person appearing or brought before the Magistrate's Court is the person whose extradition is

requested,

(b) whether the offence specified in the request is an extradition offence, and

(c) whether copies of the documents sent to the Magistrate's Court under section 6 have been served on the person.

(5) The Magistrate's Court shall decide the question in subsection (4)(a) on a balance of probabilities.

(6) If the Magistrate's Court decides in the negative any of the questions in subsection (4), the Magistrate's Court shall order that the person be discharged.

(7) If the Magistrate's Court decides each of those questions in the affirmative, the Magistrate's Court shall proceed under section 17 (bars to extradition).

Bars to extradition.

17. (1) If the Magistrate's Court is required to proceed under this section, the Magistrate's Court shall decide whether the person's extradition to the designated territory is barred by reason of -

(a) the rule against double jeopardy,

(b) extraneous considerations,

(c) the passage of time,

(d) hostage-taking considerations, or

(e) forum.

(2) Sections 18 to 25 apply for the interpretation of subsection (1).

(3) If the Magistrate's Court decides in the affirmative any of the questions in subsection (1), the Magistrate's Court shall order the person's discharge.

(4) If the Magistrate's Court decides each of those questions in the negative, and the person is accused of the commission of the extradition offence but it is not alleged that the person is unlawfully at large after conviction of the offence, the Magistrate's Court shall proceed under section 26 (case where person has not been convicted).

(5) If the Magistrate's Court decides each of those questions in the negative, and it is alleged that the person is unlawfully at large after conviction of the extradition offence, the Magistrate's Court shall proceed under section 27 (case where person has been convicted).

Rule against double jeopardy.

18. A person's extradition to a designated territory is barred by reason of the rule against double jeopardy if (but only if) it appears that the person would be entitled to be discharged under any rule of law relating to previous acquittal or previous conviction if charged with the extradition offence in the Bailiwick.

Extraneous considerations.

19. A person's extradition to a designated territory is barred by reason of extraneous considerations if (but only if) it appears -

- (a) that the request for extradition, though purporting to be made on account of the extradition offence, is in fact made for the purpose of prosecuting or punishing the person on account of the person's race, religion, nationality, gender, sexual orientation or political opinions, or
- (b) that, if extradited, the person might be prejudiced at trial or punished, detained or restricted in personal liberty by reason of the person's race, religion, nationality, gender, sexual orientation or political opinions.

Passage of time.

20. A person's extradition to a designated territory is barred by reason of the passage of time if (but only if) it appears that it would be unjust or oppressive to extradite the person by reason of the passage of time -

- (a) since the extradition offence was allegedly committed by the person, or
- (b) since the person is alleged to have become unlawfully at large,

as the case may be.

Hostage-taking considerations.

21. (1) A person's extradition to a designated territory is barred by

reason of hostage-taking considerations if (but only if) the designated territory is a party to the International Convention against the Taking of Hostages opened for signature at New York on 18th December 1979, and it appears that -

- (a) the person, if extradited, might be prejudiced at trial because communication between the person and the appropriate authorities would not be possible, and
- (b) the act or omission constituting the extradition offence also constitutes an offence under section 1 of the Taking of Hostages Act 1982^d as it applies to the Bailiwick, or an attempt to commit such an offence.

(2) The appropriate authorities are the authorities of the designated territory who are entitled to exercise rights of protection in relation to the person.

(3) A certificate issued by Her Majesty's Procureur that a territory is a party to the Convention is conclusive evidence of that fact for the purposes of section (1).

Forum.

22. (1) The extradition of a person ("D") to a designated territory is barred by reason of forum if the extradition would not be in the interests of justice.

(2) For the purposes of this section, the extradition would not be in the interests of justice if the Magistrate's Court –

^d An Act of Parliament (1982 c.28).

- (a) decides that a substantial measure of D's relevant activity was performed in the Bailiwick, and
 - (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
- (3) These are the specified matters relating to the interests of justice –
 - (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur,
 - (b) the interests of any victims of the extradition offence,
 - (c) any belief of Her Majesty's Procureur that the Bailiwick, or a particular part of the Bailiwick, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence,
 - (d) were D to be prosecuted in a part of the Bailiwick for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the Bailiwick,

- (e) any delay that might result from proceeding in one jurisdiction rather than another,
- (f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to –
 - (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and
 - (ii) the practicability of the evidence of such persons being given in the Bailiwick or in jurisdictions outside the Bailiwick,
- (g) D's connections with the Bailiwick.

(4) In deciding whether the extradition would not be in the interests of justice, the Magistrate's Court must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the designated territory concerned.

(5) If, on an application by Her Majesty's Procureur, it appears to the Magistrate's Court that Her Majesty's Procureur has considered the offences for which D could be prosecuted in the Bailiwick, or a part of the Bailiwick, in respect of the conduct constituting the extradition offence, the Magistrate's Court must make Her Majesty's Procureur a party to the proceedings on the question of whether D's extradition is barred by reason of forum.

(6) In this section "D's relevant activity" means activity which is material to the commission of the extradition offence and is alleged to have been performed by D.

Effect of Procureur's certificates on forum proceedings.

23. (1) The Magistrate's Court, when hearing proceedings under section 22 (the "forum proceedings"), must decide that the extradition is not barred by reason of forum if (at a time when the Magistrate's Court has not yet decided the proceedings) the Magistrate's Court receives a Procureur's certificate relating to the extradition.

(2) That duty to decide the forum proceedings in that way is subject to the determination of any question relating to the Procureur's certificate raised in accordance with section 25.

(3) A designated prosecutor may apply for the forum proceedings to be adjourned for the purpose of assisting Her Majesty's Procureur -

(a) in considering whether to give a Procureur's certificate relating to the extradition,

(b) in giving such a certificate, or

(c) in sending such a certificate to the Magistrate's Court.

(4) If such an application is made, the Magistrate's Court must –

(a) adjourn the forum proceedings until the application is decided, and

- (b) continue the adjournment, for such period as appears to the Magistrate's Court to be reasonable, if the application is granted.

(5) But the Magistrate's Court must end the adjournment if the application is not granted.

Procureur's certificates.

24. (1) A "**Procureur's certificate**" is a certificate given by Her Majesty's Procureur which –

- (a) certifies both matter A and matter B, and
- (b) certifies either matter C or matter D.

(2) Matter A is that Her Majesty's Procureur has considered the offences for which D could be prosecuted in the Bailiwick, or a part of the Bailiwick, in respect of the conduct constituting the extradition offence.

(3) Matter B is that Her Majesty's Procureur has decided that there are one or more such offences that correspond to the extradition offence (the "**corresponding offences**").

(4) Matter C is that –

- (a) Her Majesty's Procureur has made a formal decision as to the prosecution of D for the corresponding offences,

(b) that decision is that D should not be prosecuted for the corresponding offences, and

(c) the reason for that decision is a belief that –

(i) there would be insufficient admissible evidence for the prosecution, or

(ii) the prosecution would not be in the public interest.

(5) Matter D is that Her Majesty's Procureur believes that D should not be prosecuted for the corresponding offences because there are concerns about the disclosure of sensitive material in –

(a) the prosecution of D for the corresponding offences, or

(b) any other proceedings.

(6) In relation to the extradition of any person to a designated territory, neither this section nor any other rule of law (whether or not contained in an enactment) may require Her Majesty's Procureur –

(a) to consider any matter relevant to giving a Procureur's certificate, or

(b) to consider whether to give a Procureur's certificate.

(7) In this section "**sensitive material**" means material which appears to Her Majesty's Procureur to be sensitive, including material appearing to be sensitive on grounds relating to –

- (a) national security,
- (b) international relations, or
- (c) the prevention or detection of crime (including grounds relating to the identification or activities of witnesses, informants or any other persons supplying information to the police or any other law enforcement agency who may be in danger if their identities are revealed).

Questioning of Procureur's certificate.

25. (1) No decision of Her Majesty's Procureur relating to a Procureur's certificate in respect of D's extradition (a "**relevant certification decision**") may be questioned except on an appeal under section 45 or 50 against an order for that extradition.

(2) For the purpose of –

- (a) determining whether to give permission for a relevant certification decision to be questioned, and
- (b) determining any such question (if that permission is given),

the Royal Court must apply the procedures and principles which would be applied by it on an application for judicial review.

(3) In a case where the Royal Court quashes a Procureur's certificate, the Royal Court shall decide the question of whether or not the extradition is barred by reason of forum.

(4) Where the Royal Court is required to decide that question by virtue of subsection (3) –

(a) sections 22 to 24 and this section apply in relation to that decision (with the appropriate modifications) as they apply to a decision by a Magistrate's Court, and

(b) in particular –

(i) a reference in this section to an appeal under section 45 or 50 has effect as a reference to an appeal under section 57 to the Privy Council, and

(ii) a reference in this section to the Royal Court has effect as a reference to the Privy Council.

(5) For the purposes of sections 21 to 24 and this section –

(a) "**extradition offence**" means the offence specified in the request for extradition (including the conduct that constitutes the extradition offence),

- (b) in determining for any purpose whether an offence corresponds to the extradition offence, regard must be had in particular to the nature and seriousness of the two offences, and
- (c) a reference to a formal decision as to the prosecution of D for an offence is a reference to a decision (made after complying with, in particular, any applicable requirement concerning a code of practice) that D should, or should not, be prosecuted for the offence.

Case where person has not been convicted.

26. (1) If the Magistrate's Court is required to proceed under this section, but the designated territory to which extradition is requested is a designated territory of the first category, the Magistrate's Court shall instead proceed directly under section 29 (human rights).

(2) If the Magistrate's Court is required to proceed under this section and the designated territory to which extradition is requested is a designated territory of the second category, the Magistrate's Court shall decide whether there is sufficient evidence for the person to stand trial.

(3) In deciding the question in subsection (2), the Magistrate's Court may treat a statement made by a person in a document as admissible evidence of a fact if -

- (a) the statement is made by the person to an officer of police or to another person charged with the duty of

investigating offences or charging offenders, and

- (b) direct oral evidence by the person of the fact would be admissible.

(4) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the Magistrate's Court shall in particular have regard to -

- (a) the nature and source of the document,
- (b) whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the Magistrate's Court to be relevant, it is likely that the document is authentic,
- (c) the extent to which the statement appears to supply evidence that would not readily be available if the statement were not treated as being admissible evidence of the fact,
- (d) the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the Magistrate's Court in deciding the question in subsection (2), and
- (e) any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to

whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.

(5) A summary in a document of a statement made by a person shall be treated as a statement made by the person in the document for the purposes of subsection (3).

(6) If the Magistrate's Court decides the question in subsection (2) in the negative, the Magistrate's Court shall order that the person be discharged.

(7) If the Magistrate's Court decides that question in the affirmative, the Magistrate's Court shall proceed under section 29 (human rights).

(8) If the Magistrate's Court is required to proceed under this section and the territory to which extradition is requested is designated for the purposes of this section by regulations made by the Committee –

(a) it must not decide under subsection (1), and

(b) it must proceed under section 29.

Case where person has been convicted.

27. (1) If the Magistrate's Court is required to proceed under this section, it shall decide whether the person was present when convicted.

(2) If the Magistrate's Court decides that the person was present when convicted, the Magistrate's Court shall proceed directly under section 29 (human rights).

(3) If the Magistrate's Court decides that the person was not present when convicted, the Magistrate's Court shall decide whether the person deliberately absented himself or herself from the trial.

(4) If the Magistrate's Court decides that the person deliberately absented himself or herself from the trial, the Magistrate's Court shall proceed directly under section 29 (human rights).

(5) If the Magistrate's Court decides that the person did not deliberately absent himself or herself from the trial, the Magistrate's Court shall decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.

(6) If the Magistrate's Court decides the question in subsection (5) in the affirmative the Magistrate's Court shall proceed under section 28 (convictions in absentia).

(7) If the Magistrate's Court decides the question in subsection (5) in the negative the Magistrate's Court shall order the person's discharge.

(8) The Magistrate's Court shall not decide the question in subsection (5) in the affirmative unless, in any proceedings that would allegedly constitute a retrial or review amounting to a retrial -

- (a) the person would have the right to defend himself or herself in person or through legal assistance of his or her own choosing or, if the person does not have sufficient means to pay for legal assistance, the right to

be given it free when the interests of justice so require,
and

- (b) the person would also have the right to examine witnesses against him or her or to have them examined, and to obtain the attendance and examination of witnesses on his or her own behalf under the same conditions as the witnesses against the person.

Conviction in absentia in designated territory.

28. (1) If the Magistrate's Court is required to proceed under this section, the Magistrate's Court shall decide whether there is sufficient evidence for the person to stand trial.

(2) In deciding the question in subsection (1), the Magistrate's Court may treat a statement made by a person in a document as admissible evidence of a fact if -

- (a) the statement is made by the person to an officer of police or to another person charged with the duty of investigating offences or charging offenders, and
- (b) direct oral evidence by the person of the fact would be admissible.

(3) A summary in a document of a statement made by a person shall be treated as a statement made by the person in the document for the purposes of subsection (2).

(4) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the Magistrate's Court shall in particular have regard to -

- (a) the nature and source of the document,
- (b) whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the Magistrate's Court to be relevant, it is likely that the document is authentic,
- (c) the extent to which the statement appears to supply evidence that would not readily be available if the statement were not treated as being admissible evidence of the fact,
- (d) the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the Magistrate's Court in deciding the question in subsection (1), and
- (e) any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.

(5) Except as otherwise provided in this section, in deciding the question in subsection (1), the Magistrate's Court may admit evidence if (but only if) it would be admissible in criminal proceedings.

(6) If the Magistrate's Court decides in the negative the question in subsection (1), the Magistrate's Court shall order that the person be discharged.

(7) If the Magistrate's Court decides that question in the affirmative, the Magistrate's Court shall proceed under section 29 (human rights).

(8) If the Magistrate's Court is required to proceed under this section and the territory to which extradition is requested is designated for the purposes of this section by regulations made by the Committee –

(a) the Magistrate's Court must not decide under subsection (1), and

(b) he or she must proceed under section 29 (human rights).

Consideration of human rights.

29. (1) If the Magistrate's Court is required by any of sections 26, 27 or 28 to proceed under this section, the Magistrate's Court shall decide whether the person's extradition would be compatible with the Convention Rights within the meaning of the Human Rights Law.

(2) If the Magistrate's Court decides in the negative the question in subsection (1), the Magistrate's Court shall order that the person be discharged.

(3) If the Magistrate's Court decides that question in the affirmative, the Magistrate's Court shall send the case to Her Majesty's Procureur for the latter's decision as to whether the person is to be extradited.

Deferral by Magistrate's Court where person charged with offence in the Bailiwick.

30. (1) If at any time during the extradition hearing the Magistrate's Court is informed on behalf of Her Majesty's Procureur that the person is charged with an offence in the Bailiwick, the Magistrate's Court shall adjourn the extradition hearing until until one of these occurs –

- (a) the charge is disposed of,
- (b) the charge is withdrawn,
- (c) proceedings in respect of the charge are discontinued.

(2) If a sentence of imprisonment or another form of detention is imposed in respect of the offence in the Bailiwick with which the person is charged, the Magistrate's Court may adjourn the extradition hearing until the sentence has been served.

(3) If, before the Magistrate's Court adjourns the extradition hearing under subsection (2), it has decided under section 17 whether the person's extradition is barred by reason of the rule against double jeopardy, the Magistrate's Court must decide that question again after the resumption of the extradition hearing.

Deferral by Magistrate's Court where person serving sentence in the Bailiwick.

31. If at any time during the extradition hearing the Magistrate's Court is informed on behalf of Her Majesty's Procureur that the person whose extradition is requested is serving a sentence of imprisonment or another form of detention in the Bailiwick, the Magistrate's Court may adjourn the extradition hearing until the person is released from detention pursuant to the sentence (whether on licence or otherwise).

Other requests for extradition.

32. (1) If at any time in the extradition hearing, the Magistrate's Court is informed by or on behalf of Her Majesty's Procureur that –

- (a) Her Majesty's Procureur has received another valid request for the person's extradition to a designated territory,
- (b) the request has not been disposed of, and
- (c) Her Majesty's Procureur has made an order under section 75(2) for further proceedings on the request under consideration by the Magistrate's Court to be deferred until the other request has been disposed of,

the Magistrate's Court shall remand the person in custody or on bail.

(2) If the Magistrate's Court remands the person in custody, it may later grant bail to the person.

Consideration of physical or mental condition.

33. (1) If at any time in the extradition hearing it appears to the

Magistrate's Court that the condition to which subsection (2) refers is satisfied, the Magistrate's Court shall –

- (a) order the person's discharge, or
- (b) adjourn the extradition hearing until it appears to the Magistrate's Court that the condition to which subsection (2) refers is no longer satisfied.

(2) The condition to which subsection (1) refers is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite the person.

Sending of case to Her Majesty's Procureur.

34. (1) This section applies if the Magistrate's Court sends a case to Her Majesty's Procureur for decision as to whether a person is to be extradited.

(2) If this section applies, the Judge shall inform the person in ordinary language –

- (a) that the person has a right to appeal to the Royal Court, and
- (b) that if the right of appeal is exercised, the appeal will not be heard until Her Majesty's Procureur has made the decision.

(3) However, subsection (2) does not apply if the person has consented under section 72 to his or her extradition.

(4) If this section applies, the Magistrate's Court shall remand the person in custody or on bail –

- (a) to await Her Majesty's Procureur's decision, and
- (b) to await extradition to the designated territory to which extradition is requested (if Her Majesty's Procureur orders the person to be extradited).

(5) If the Magistrate's Court remands the person in custody, it may later grant bail to the person.

Functions of Her Majesty's Procureur

Her Majesty's Procureur's consideration of case.

35. (1) If the Magistrate's Court sends a case to Her Majesty's Procureur for a decision as to whether a person is to be extradited, Her Majesty's Procureur shall decide whether he or she is prohibited under –

- (a) section 36 (death penalty),
- (b) section 37 (speciality), or
- (c) section 38 (earlier extradition to the Bailiwick from another territory),

from ordering the person's extradition.

(2) If Her Majesty's Procureur decides that he or she is prohibited under any section to which subsection (1) refers from ordering the person's extradition, Her Majesty's Procureur shall order that the person be discharged.

(3) If Her Majesty's Procureur decides that he or she is not prohibited under any section to which subsection (1) refers from ordering the person's extradition, Her Majesty's Procureur shall order the person to be extradited to the designated territory to which his or her extradition is requested unless –

- (a) Her Majesty's Procureur is informed that the request has been withdrawn,
- (b) Her Majesty's Procureur makes an order under section 75(2) or (3) (relating to competing claims for extradition) for further proceedings on the request to be deferred and the person is discharged under section 106, or
- (c) Her Majesty's Procureur orders under section 122 (national security) that the person be discharged.

(4) In deciding the questions in subsection (1), Her Majesty's Procureur is not required to consider any representations received by him or her after the end of the permitted period.

(5) The permitted period is the period of 4 weeks starting with the appropriate day (in respect of which see section 42).

(6) In the case of a person who has consented under section 72 to his or her extradition, HM Procureur is not required –

- (a) to wait until the end of the permitted period before ordering the person's extradition, or
- (b) to consider any representations received after the order is made.

Death penalty.

36. (1) Her Majesty's Procureur shall not order a person's extradition to a designated territory if the person could be, will be or has been sentenced to death for the offence concerned in that designated territory.

(2) Subsection (1) does not apply if Her Majesty's Procureur receives a written assurance that a sentence of death –

- (a) will not be imposed, or
- (b) if imposed, will not be carried out,

and Her Majesty's Procureur considers that assurance adequate.

Speciality.

37. (1) Her Majesty's Procureur shall not order a person's extradition to a designated territory if there are no speciality arrangements with that designated territory.

(2) Subsection (1) does not apply if before the case was sent to Her

Majesty's Procureur, the person had consented under section 72 to being extradited.

(3) There are speciality arrangements with a designated territory if (but only if) under the law of that designated territory or arrangements made between it and the Bailiwick, a person who is extradited to the designated territory from the Bailiwick may be dealt with in the designated territory for an offence committed before the person's extradition only where –

- (a) the offence is one to which subsection (4) refers, or
- (b) the person is first given an opportunity to leave the designated territory.

(4) The offences to which this section refers are –

- (a) the offence in respect of which the person is extradited,
- (b) an extradition offence disclosed by the same facts as that offence, other than one in respect of which a sentence of death could be imposed,
- (c) an extradition offence in respect of which Her Majesty's Procureur consents to the person's being dealt with, and
- (d) an offence in respect of which the person waives the right that he or she would have had (but for this subsection) not to be dealt with for the offence.

(5) Arrangements made with a designated territory that is a Commonwealth country or a British overseas territory may be made –

- (a) for a particular case,
- (b) for a particular class or particular classes of case, or
- (c) generally, in respect of all cases.

(6) A certificate issued by or under the authority of Her Majesty's Procureur confirming the existence of arrangements with a designated territory that is a Commonwealth country or a British overseas territory and stating the terms of the arrangements is conclusive evidence of those matters.

Earlier extradition to the Bailiwick from another territory.

38. Her Majesty's Procureur shall not order a person's extradition to a designated territory if –

- (a) the person was extradited to the Bailiwick from another territory (the extraditing territory),
- (b) under arrangements existing between the Bailiwick and the extraditing territory, that territory's consent is required to the person's extradition from the Bailiwick to the designated territory in respect of the extradition offence under consideration, and
- (c) that consent has not been given on behalf of the

extraditing territory.

Deferral: person charged with offence in the Bailiwick.

39. (1) If the Magistrate's Court sends a case to Her Majesty's Procureur for a decision as to whether a person is to be extradited, and the person is charged with an offence in the Bailiwick, Her Majesty's Procureur shall not make a decision with regard to the person's extradition until the charge is disposed of or withdrawn, or a declaration is made that the charge has been abandoned.

(2) If a sentence of imprisonment or another form of detention is imposed in respect of the offence in the Bailiwick with which the person is charged, Her Majesty's Procureur may defer making a decision with regard to the person's extradition until the sentence has been served.

Deferral: person serving sentence in the Bailiwick.

40. If –

- (a) the Magistrate's Court sends a case to Her Majesty's Procureur for a decision as to whether a person is to be extradited, and
- (b) the person is in custody serving a sentence of imprisonment or another form of detention in the Bailiwick,

Her Majesty's Procureur may defer making a decision with regard to the person's extradition until the sentence has been served.

Time limit for order for extradition or discharge.

41. (1) If –

- (a) the Magistrate's Court sends a case to Her Majesty's Procureur for a decision whether a person is to be extradited,
- (b) within the period of 2 months commencing on the appropriate day (in respect of which see section 42), Her Majesty's Procureur does not make an order for the person's extradition or discharge, and
- (c) the person applies to the Royal Court to be discharged,

the Royal Court shall order that the person be discharged.

(2) The Royal Court may, on an application made by Her Majesty's Procureur before the end of the period specified in subsection (1)(b), extend that period from time to time.

The appropriate day.

42. (1) This section applies for the purposes of sections 35 and 41 if the Magistrate's Court sends a case to Her Majesty's Procureur for Her Majesty's Procureur's decision whether a person is to be extradited.

(2) If the person is charged with an offence in the Bailiwick, the appropriate day is –

- (a) the day on which the charge is disposed of,

- (b) the day on which the charge is withdrawn, or
- (c) the day on which proceedings in respect of the charge are discontinued.

(3) If under section 39(2) or section 40 Her Majesty's Procureur defers making a decision until the person has served a sentence, the appropriate day is the day on which the person is released from detention pursuant to the sentence (whether on licence or otherwise).

(4) If section 75 (competing extradition requests) applies to the request for the person's extradition (the request concerned), the appropriate day is –

- (a) the day on which Her Majesty's Procureur makes an order under that section, if the order is for proceedings on the other request to be deferred, or
- (b) the day on which an order is made under section 107, if the order under section 75 is for proceedings on the request concerned to be deferred and the order under section 107 is for the proceedings to be resumed.

(5) If more than one of subsections (2) to (4) applies, the appropriate day is the latest of the days specified in those sections that applies.

(6) In any other case, the appropriate day is the day on which the Magistrate's Court sends the case to Her Majesty's Procureur for a decision as to whether the person is to be extradited.

Information to be given by Her Majesty's Procureur.

43. (1) If Her Majesty's Procureur orders a person's extradition under this Part, he or she must in writing –

- (a) inform the person of the order,
- (b) inform the person in ordinary language that the person has a right of appeal to the Royal Court, and
- (c) inform any person who is acting on behalf of the designated territory concerned that he or she has made the order.

(2) However, the requirement to inform a person of his or her right of appeal does not apply if the person has consented under section 72 to being extradited.

(3) If Her Majesty's Procureur –

- (a) orders a person's extradition under this Part, and
- (b) has received in respect of the matter an assurance to which section 36(2) (death sentence) refers,

he or she must give the person a copy of the assurance when under subsection (1) informing the person of the order.

(4) If Her Majesty's Procureur orders that a person be discharged, Her Majesty's Procureur shall inform –

- (a) the person, and
- (b) the authorities of the designated territory concerned,

that he or she has made the order.

Making of order for extradition or discharge.

44. An order –

- (a) under section 35 for a person's extradition, or
- (b) under section 35 or section 69 (withdrawal of request after case sent to Her Majesty's Procureur) that a person be discharged,

shall be made in writing, and signed by Her Majesty's Procureur.

Appeals

Appeal to Royal Court against sending of case to Her Majesty's Procureur.

45. (1) Subject to subsection (2), a person may appeal to the Royal Court against a decision by the Magistrate's Court that results in the case being sent to Her Majesty's Procureur for a decision as to whether the person is to be extradited.

(2) Subsection (1) does not apply if before the case was sent to Her Majesty's Procureur the person consented under section 72 to being extradited.

(3) An appeal under this section may be brought on a question of law or fact and lies only with leave of the Royal Court.

(4) If an appeal is brought under this section before Her Majesty's Procureur has decided whether the person is to be extradited, the appeal shall not be heard until Her Majesty's Procureur has made that decision.

(5) No appeal may be brought or proceeded with under this section if Her Majesty's Procureur has ordered that the person be discharged.

(6) If notice of an appeal under section 52 against the decision which resulted in the order for the person's discharge is given in accordance with subsection (4) of that section –

(a) subsections (4) and (5) do not apply, and

(b) no appeal may be brought under this section if the Royal Court has made its decision on the appeal.

(7) Notice of application for leave to appeal under this section shall be given in accordance with rules of court before the end of the period of 14 days commencing on the day on which Her Majesty's Procureur informs the person under section 43 that he or she has ordered the person's extradition ("**the permitted period**").

(8) However, where a person gives notice of application for leave to appeal after the end of the permitted period, the Royal Court may not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.

Royal Court's powers on appeal against sending of case to Her Majesty's Procureur.

46. (1) On an appeal under section 45, the Royal Court may –
- (a) allow the appeal,
 - (b) direct the Magistrate's Court to decide again any question or questions that the Magistrate's Court decided at the extradition hearing, or
 - (c) dismiss the appeal.
- (2) The Royal Court may allow the appeal only if the conditions in subsection (3) or in subsection (4) are satisfied.
- (3) The conditions are –
- (a) that the Magistrate's Court ought to have decided differently a question before it at the extradition hearing, and
 - (b) that if the Magistrate's Court had decided the question in the way in which it ought to have decided, it would have been required to order that the person be discharged.
- (4) The conditions are –

- (a) that an issue is raised that was not raised at the extradition hearing, or that evidence is available that was not available at the extradition hearing,
- (b) that the issue or evidence would have resulted in the Magistrate's Court's deciding differently a question before it at the extradition hearing, and
- (c) that if the Magistrate's Court had decided the question in that different way, it would have been required to order that the person be discharged.

(5) If the Royal Court allows the appeal, it shall –

- (a) order that the person be discharged, and
- (b) quash the order for the person's extradition.

(6) Where, on an appeal under section 45, the Royal Court has directed the Magistrate's Court to decide any question or questions again, and it does so –

- (a) if it comes to a different decision on any such question than at the extradition hearing, it must order that the person be discharged, and
- (b) if it does not come to a different decision on any such question than at the extradition hearing, the appeal shall be taken to have been dismissed by a decision of

the Royal Court.

(7) If the Royal Court makes a direction under subsection (1)(b) it shall remand the person in custody or on bail; and if the Royal Court remands the person in custody it may later grant bail.

Appeal to Royal Court against discharge by Magistrate's Court.

47. (1) An appeal on behalf of the designated territory concerned may be brought to the Royal Court against a decision by the Magistrate's Court at an extradition hearing that results in the Magistrate's Court's ordering that a person be discharged.

(2) However, subsection (1) does not apply if the order that the person be discharged was made under section 68.

(3) An appeal under this section may be brought on a question of law or fact and lies only with the leave of the Royal Court.

(4) Notice of an appeal under this section shall be given in accordance with rules of court before the end of the period of 14 days commencing on the day on which the order for the person's discharge is made.

Royal Court's powers on appeal against discharge by Magistrate's Court.

48. (1) On an appeal under section 47, the Royal Court may –

(a) allow the appeal,

(b) direct the Magistrate's Court to decide the relevant question again, or

(c) dismiss the appeal.

(2) A question is the relevant question if the Magistrate's Court's decision on it resulted in the order that the person be discharged.

(3) The Royal Court may allow the appeal only if the conditions in subsection (4) or in subsection (5) are satisfied.

(4) The conditions are –

(a) that the Magistrate's Court ought to have decided the question differently, and

(b) that if it had decided the question in the way in which it ought to have been decided, it would not have been required to order that the person be discharged.

(5) The conditions are –

(a) that an issue is raised that was not raised at the extradition hearing, or that evidence is available that was not available at the extradition hearing,

(b) that the issue or evidence would have resulted in the Magistrate's Court's deciding differently the question in respect of which the decision resulted in the order that the person be discharged, and

- (c) that if the Magistrate's Court had decided the question in that way, it would not have been required to order that the person be discharged.

(6) If the Royal Court allows the appeal, it shall –

- (a) quash the order that the person be discharged,
- (b) remit the case to the Magistrate's Court, and
- (c) direct the Magistrate's Court to proceed as required if it had decided the question differently at the extradition hearing.

(7) If the Royal Court makes a direction under subsection (1)(b)

and –

- (a) the Magistrate's Court comes to a different decision on the question than at the extradition hearing, it must proceed as would have been required if it had decided it in that different way at the extradition hearing, and
- (b) if the Magistrate's Court does not come to a different decision on the question than at the extradition hearing, the appeal shall be taken to have been dismissed by a decision of the Royal Court.

(8) If the Royal Court –

- (a) allows the appeal, or
- (b) makes a direction under subsection (1)(b),

it must remand the person in custody or on bail; and if the Royal Court remands the person in custody it may later grant bail.

Detention pending conclusion of appeal against discharge by Magistrate's Court.

49. (1) If, immediately after the Magistrate's Court orders that a person be discharged, it is informed on behalf of the designated territory concerned of an intention to appeal under section 47, it must remand the person in custody or on bail while the appeal is pending.

(2) If the Magistrate's Court remands the person in custody, it may later grant bail to the person.

(3) An appeal under section 47 is pending until –

- (a) it is abandoned,
- (b) the Royal Court dismisses the appeal and the circumstances to which subsection (4) refers apply,
- (c) the Royal Court makes a direction under section 48(1)(b) and the circumstances to which subsection (4) refers apply,
- (d) the end of the period of 28 days commencing on the day on which leave to appeal to the Privy Council,

against the decision of the Royal Court on the appeal, is granted, if no appeal to the Privy Council is brought before the end of that period, or

- (e) no further step can be taken on behalf of the designated territory in relation to the appeal unless a court grants leave to take a step out of time,

whichever occurs first.

(4) The circumstances to which this subsection refers are that on the dismissing of the appeal by the Royal Court, the Royal Court is not immediately informed on behalf of the designated territory of an intention to apply for leave to appeal to the Privy Council.

Appeal to Royal Court against extradition order by Her Majesty's Procureur.

50. (1) A person may appeal to the Royal Court against a decision by Her Majesty's Procureur ordering the person's extradition.

(2) However, subsection (1) does not apply if the person has consented to being extradited.

(3) An appeal under this section may be brought on a question of law or fact but lies only with leave of the Royal Court.

(4) Notice of an application for leave to appeal under this section shall be given in accordance with rules of court before the end of the period of 14 days commencing on the day on which Her Majesty's Procureur informs the person under section 43 that he or she has ordered the person's extradition ("**the permitted**

period").

(5) Notice of an application for leave to appeal under this section may be given after the end of the permitted period if it is an application for leave to appeal on human rights grounds.

(6) Notice of an application for leave to appeal on human rights grounds given after the end of the permitted period must be given before the person is extradited to the designated territory in accordance with section 61.

(7) Where notice of application for leave to appeal is given in accordance with subsections (5) and (6), the Royal Court is to grant leave only if it appears to the Royal Court that –

(a) the appeal is necessary to avoid injustice, and

(b) the circumstances are exceptional and make it appropriate for the appeal to be heard.

(8) Where a person gives notice of application for leave to appeal after the end of the permitted period (whether or not the application is for leave to appeal on human rights grounds), the Royal Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.

(9) In this section "**to appeal on human rights grounds**" means to appeal against the order for the person's extradition on the grounds (and only on the grounds) that the extradition would not be compatible with the Convention rights within the meaning of the Human Rights Law.

Royal Court's powers on appeal against extradition order by Her Majesty's Procureur.

51. (1) On an appeal under section 50, the Royal Court may allow or dismiss the appeal.

(2) The Royal Court may allow the appeal only on the ground specified in section (3) or the ground specified in section (4).

(3) The ground to which this section refers is –

- (a) that Her Majesty's Procureur ought to have decided differently a question before him or her, and
- (b) that if Her Majesty's Procureur had decided the question in the way in which it ought to have been decided, he or she would not have ordered the person's extradition.

(4) The ground to which this section refers is –

- (a) that an issue is raised that was not raised when the case was being considered by Her Majesty's Procureur, or information is available that was not available at that time,
- (b) that the issue or information would have resulted in Her Majesty's Procureur deciding differently a question before him or her, and

(c) that if Her Majesty's Procureur had decided the question in that way, he or she would not have ordered the person's extradition.

(5) If the Royal Court allows the appeal, it shall –

(a) order that the person be discharged, and

(b) quash the order for the person's extradition.

Appeal to Royal Court against discharge by Her Majesty's Procureur.

52. (1) An appeal to the Royal Court may be brought on behalf of the designated territory concerned against a decision by Her Majesty's Procureur that results in Her Majesty's Procureur ordering that a person be discharged.

(2) However, subsection (1) does not apply if the order that the person be discharged was made under section 69 (withdrawal of request after case sent to Her Majesty's Procureur).

(3) An appeal under this section may be brought on a question of law or fact, and lies only with the leave of the Royal Court.

(4) Notice of an application for leave to appeal under this section must be given in accordance with rules of court before the end of the period of 14 days commencing on the day on which under section 43(4) Her Majesty's Procureur informs a person acting on behalf of the designated territory that the order has been made.

Royal Court's powers on appeal against discharge by Her Majesty's Procureur.

53. (1) On an appeal under section 52, the Royal Court may –
- (a) allow the appeal, or
 - (b) dismiss the appeal.
- (2) The Royal Court may allow the appeal only if the conditions in subsection (3) or in subsection (4) are satisfied.
- (3) The conditions are –
- (a) that Her Majesty's Procureur ought to have decided differently a question before him or her, and
 - (b) that if Her Majesty's Procureur had decided the question in the way in which it ought to have been decided, he or she would have ordered the person's extradition.
- (4) The conditions are –
- (a) that an issue is raised that was not raised when the case was being considered by Her Majesty's Procureur, or information is available that was not available at that time,
 - (b) that the issue or information would have resulted in Her Majesty's Procureur deciding differently a

question before him or her, and

- (c) if Her Majesty's Procureur had decided the question in that way, he or she would have ordered the person's extradition.

(5) If the Royal Court allows the appeal, it shall –

- (a) quash the order that the person be discharged, and
- (b) order the person's extradition.

(6) If the Royal Court allows the appeal it shall remand the person in custody or on bail, and if the Royal Court remands the person in custody it may later grant bail.

Detention pending conclusion of appeal against discharge by Her Majesty's Procureur.

54. (1) This section applies in a case where Her Majesty's Procureur orders the person's discharge under this Part.

(2) Subject to subsection (3) -

- (a) the order made by the Magistrate's Court under section 34(4) ("**the remand order**") remains in force until the end of the period of three days beginning with the day on which the person's discharge is ordered, and

- (b) if within that period Her Majesty's Procureur is informed in writing on behalf of the designated territory of an intention to appeal under section 52, the remand order remains in force while the appeal is pending.

(3) If the person is remanded in custody under section 34(4), the appropriate judge may grant bail.

(4) An appeal under section 52 is pending until –

- (a) it is abandoned,
- (b) the Royal Court allows the appeal, or dismisses the appeal, and it is not immediately informed on behalf of the designated territory of an intention to appeal to the Privy Council,
- (c) the end of the period of 28 days commencing on the day on which leave to appeal to the Privy Council, against the decision of the Royal Court on the appeal, is granted, if no appeal to the Privy Council is brought before the end of that period, or
- (d) no further step can be taken on behalf of the designated territory in relation to the appeal unless a court grants leave to take a step out of time,

whichever occurs first.

Costs on appeal to Royal Court.

55. On any appeal to it under this Part, the Royal Court may make such order as to costs (in respect of the proceedings before it or in respect of the extradition hearing) as it considers just and reasonable.

Time limit for start of hearing of appeal to Royal Court.

56. (1) Rules of court shall prescribe the period ("**the period**") within which the Royal Court shall begin to hear an appeal under any of sections 45, 47, 50 and 52.

(2) The Royal Court may from time to time extend the period in a particular case, if the court believes that it is in the interests of justice to do so.

(3) The Royal Court shall begin to hear the appeal before the end of the period.

(4) If subsection (3) is not complied with and the appeal is under section 45 or section 50 –

- (a) the appeal shall be taken to have been allowed by a decision of the Royal Court,
- (b) the person whose extradition has been ordered shall be taken to have been discharged by order of the Royal Court, and
- (c) the order for the person's extradition shall be taken to have been quashed by the Royal Court.

(5) If subsection (3) is not complied with and the appeal is under section 47 or section 52, the appeal shall be taken to have been dismissed by a decision of the Royal Court.

Further appeal to Privy Council.

57. (1) An appeal lies to the Privy Council from a decision of the Royal Court on an appeal under any of sections 45, 47, 50 and 52.

(2) An appeal under this section lies at the instance of –

(a) the person whose extradition is requested, or

(b) a person acting on behalf of the designated territory.

(3) An appeal under this section lies only with the leave of the Royal Court or the Privy Council.

(4) Leave to appeal under this section shall not be granted unless–

(a) the Royal Court has certified that there is a point of law of general public importance involved in the decision, and

(b) it appears to the court granting leave that the point is one that ought to be considered by the Privy Council.

(5) An application to the Royal Court for leave to appeal under this section against its decision shall be made before the end of the period of 14 days

commencing on the day on which the court makes that decision.

(6) An application to the Privy Council for leave to appeal under this section shall be made before the end of the period of 14 days commencing on the day on which the Royal Court refuses leave to appeal.

(7) If leave to appeal under this section is granted, the appeal shall be brought before the end of the period of 28 days commencing on the day on which leave is granted.

(8) If subsection (7) is not complied with –

- (a) the appeal shall be taken to have been brought, and
- (b) the appeal shall be taken to have been dismissed by the Privy Council immediately after the end of the period specified in that section.

(9) For the purpose of subsection (8)(b) –

- (a) any power of a court to extend the period permitted for giving notice of appeal, and
- (b) any power of a court to grant leave to take a step out of time,

shall be disregarded.

(10) The Royal Court may grant bail to a person appealing under

this section or applying for leave to appeal under this section.

Powers of Privy Council on appeal.

58. (1) On an appeal under section 57, the Privy Council may allow or dismiss the appeal.

(2) If the person whose extradition is requested brings an appeal under section 57, and the Privy Council allows the appeal, it shall -

- (a) order that the person be discharged, and
- (b) if the appeal was against a decision of the Royal Court to dismiss an appeal under section 45 or section 50 or to allow an appeal under section 47 or section 52, quash the order for the person's extradition.

(3) If -

- (a) the Royal Court allows an appeal under section 45 or 50 by the person whose extradition is requested or dismisses an appeal under section 52 by a person acting on behalf of the designated territory,
- (b) a person acting on behalf of the designated territory brings an appeal under section 51 against the decision of the Royal Court, and
- (c) the Privy Council allows the appeal,

the Privy Council shall quash the order discharging the person made by the Royal Court under section 46(5) or section 51(5), or by Her Majesty's Procureur under this Part, and order the person to be extradited.

(4) If –

- (a) the Royal Court dismisses an appeal under section 47 against a decision made by the Magistrate's Court at the extradition hearing,
- (b) a person acting on behalf of the designated territory brings an appeal under section 57 against the decision of the Royal Court, and
- (c) the Privy Council allows the appeal,

the Privy Council shall take the steps to which subsection (5) refers.

(5) The steps to which this section refers are –

- (a) to quash the order of the Magistrate's Court discharging the person whose extradition is requested,
- (b) to remit the case to the Magistrate's Court, and
- (c) to direct the Magistrate's Court to proceed as it would have been required to do if it had decided the relevant question differently.

(6) A question is the relevant question if the Magistrate's Court's decision on it resulted in the order that the person be discharged.

(7) In a case where subsections (3) to (5) apply, the Privy Council must remand, in custody or on bail, the person whose extradition is requested.

(8) If the Privy Council remands the person in custody the Royal Court may later grant bail.

Detention pending conclusion of certain appeals under section 57.

59. (1) This section applies if—

- (a) on an appeal under section 45 or 50 the Royal Court orders the person's discharge, and
- (b) immediately after it does so, the court is informed on behalf of the designated territory of an intention to appeal under section 57.

(2) The Royal Court must remand the person in custody or on bail while the appeal is pending.

(3) If the Royal Court remands the person in custody it may later grant bail.

(4) An appeal under section 57 ceases to be pending at the earliest of these times –

- (a) when the proceedings on the appeal are discontinued,
- (b) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Privy Council against the decision of the Royal Court on the appeal under section 45 or 50 is granted, if no appeal to the Privy Council is brought before the end of that period,
- (c) when there is no further step that can be taken on behalf of the designated territory in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).

Appeal to be only remedy.

60. A decision under this Part of the Magistrate's Court or Her Majesty's Procureur may be challenged in legal proceedings only by means of an appeal under this Part.

Time limit for extradition

Time limit for extradition if there is no appeal.

61. (1) This section applies if Her Majesty's Procureur orders a person's extradition to a designated territory and -

- (a) no notice of an appeal under section 45 or section 50 is given before the end of the period of 14 days commencing on the day on which Her Majesty's Procureur informs the person under section 43(1) that

he or she has ordered the person's extradition, or

- (b) notice is given during that period but the Royal Court refuses leave to appeal to it.

(2) The person must be extradited to the designated territory before the end of the required period, which is 28 days starting with –

- (a) the day on which Her Majesty's Procureur makes the extradition order (where subsection (1)(a) applies and no order is made under section 63 or section 66),
- (b) the day on which the decision of the Royal Court refusing leave to appeal to it becomes final (where subsection (1)(b) applies and no order is made under section 63 or section 66), or
- (c) the earliest day on which the extradition order may be carried out (where an order is made under section 63 or section 66).

(3) The decision of the Royal Court refusing leave to appeal to it becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal.

(4) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his or her discharge, unless reasonable cause is shown for the delay.

(5) For the purposes of subsections (1) to (3) -

- (a) any power of a court to extend the period permitted for giving notice of application for leave to appeal, and
- (b) any power of a court to grant leave to take a step out of time,

shall be disregarded.

(6) If leave to appeal to the Royal Court is granted on an application notice of which was given after the end of the the end of the period of 14 days commencing on the day on which Her Majesty's Procureur informs the person under section 43(1) that he or she has ordered the person's extradition, this section ceases to apply (but section 62 applies instead).

Time limit for extradition if there is an appeal.

62. (1) If –

- (a) there is an appeal to the Royal Court under any of sections 45, 50 and 52 against a decision or order relating to a person's extradition to a designated territory, and
- (b) the effect of the decision of the relevant court on appeal is that the person is to be extradited there,

the person shall be extradited to the designated territory before the end of the required period.

- (2) The required period is 28 days commencing –
- (a) on the day on which the decision of the relevant court on appeal becomes final, or
 - (b) the day on which further proceedings on appeal are abandoned.

(3) However, if the day referred to in paragraph (a) or (b) of subsection (2) is earlier than the earliest day on which, by reason of an order under section 63 or section 66, the extradition order may be carried out ("**the postponed date**"), the required period is 28 days beginning with the postponed date.

- (4) The relevant court on appeal is –
- (a) the Royal Court, if there is no further appeal to the Privy Council against the decision on the appeal to the Royal Court, or proceedings on any further appeal to the Privy Council are abandoned, or
 - (b) the Privy Council, if there is a further appeal to the Privy Council and proceedings on that further appeal are not abandoned.

- (5) The decision of the Royal Court becomes final –
- (a) at the end of the period for applying to the Royal Court for leave to appeal to the Privy Council, if there is no

such application,

- (b) at the end of the period permitted for applying to the Privy Council for leave to appeal, if the Royal Court refuses leave to appeal and there is no application to the Privy Council itself for leave to appeal,
- (c) if the Privy Council refuses leave to appeal to it, or
- (d) if, leave to appeal under section 57 having been granted, subsection (7) of that section (relating to the time for bringing the appeal) is not complied with.

(6) The decision of the Privy Council becomes final when it is made.

(7) If –

- (a) subsection (1) is not complied with, and
- (b) the person applies to the Magistrate's Court to be discharged,

the Magistrate's Court shall order that the person be discharged, unless reasonable cause is shown for the delay.

(8) For the purposes of subsection (5) –

- (a) any power of a court to extend the period permitted for

giving notice of appeal, and

- (b) any power of a court to grant leave to take a step out of time,

shall be disregarded.

Magistrate's Court informed after extradition order that person is charged with offence in Bailiwick.

63. (1) This section applies if –

- (a) Her Majesty's Procureur has made an order for a person's extradition under this Part, and
- (b) before the extradition order is carried out the Magistrate's Court is informed that the person is charged with an offence in the Bailiwick.

(2) The Magistrate's Court must order the extradition order not to be carried out until one of these occurs –

- (a) the charge is disposed of,
- (b) the charge is withdrawn,
- (c) proceedings in respect of the charge are discontinued.

(3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the Magistrate's Court may order the

extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether on licence or otherwise).

(4) Rules of court may provide that where there is an appeal against the extradition order –

- (a) a reference in this section to the Magistrate's Court has effect, in prescribed circumstances, as if it were a reference to the court hearing the appeal, and
- (b) this section has effect with any other prescribed modifications.

Extradition following deferral for competing claim

64. (1) This section applies if –

- (a) an order is made under this Part for a person to be extradited to a designated territory in pursuance of a request for his or her extradition,
- (b) before the person is extradited to the territory an order is made under section 75(2) for the person's extradition in pursuance of the request to be deferred, and
- (c) the Magistrate's Court makes an order under section 107(1) for the person's extradition in pursuance of the request to cease to be deferred.

(2) In a case where section 61 applies, the required period for the purposes of section 61(2) is 28 days starting with the day on which the order under section 107(1) is made.

(3) In a case where section 62 applies, the required period for the purposes of section 62(2) is 28 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the order under section 107(1) is made.

Asylum claim.

65. (1) If -

- (a) an order is made for a person to be extradited in pursuance of a request, and
- (b) the person has made an asylum claim (whether before or after the making of the request),

the person must not be extradited in pursuance of the request before the asylum claim is finally determined; and sections 61 and 62 have effect subject to this.

(2) If His Excellency allows the asylum claim, the claim is finally determined when he makes his decision on the claim.

(3) If His Excellency rejects the asylum claim, the claim is finally determined –

- (a) when His Excellency makes his decision on the claim, if there is no right to appeal against His Excellency's decision on the claim,
- (b) when the period permitted for appealing against His Excellency's decision on the claim ends, if there is such a right but there is no such appeal,
- (c) when the appeal against that decision is finally determined or is withdrawn or abandoned, if there is such an appeal.

(4) An appeal against His Excellency's decision on an asylum claim is not finally determined for the purposes of subsection (3) at any time when a further appeal or an application for leave to bring a further appeal –

- (a) has been instituted and has not been finally determined or withdrawn or abandoned, or
- (b) may be brought.

(5) The possibility of an appeal out of time with leave must be ignored for the purposes of subsections (3) and (4).

Magistrate's Court informed after extradition order that person is serving sentence in the Bailiwick.

66. (1) This section applies if –

- (a) Her Majesty's Procureur has made an order for a person's extradition under this Part, and
- (b) before the extradition order is carried out the Magistrate's Court is informed that the person is serving a sentence of imprisonment or another form of detention in the Bailiwick.

(2) The Magistrate's Court may order the extradition order not to be carried out until the person is released from detention pursuant to the sentence (whether on licence or otherwise).

(3) Rules of court may provide that where there is an appeal against the extradition order –

- (a) reference in this section to the Magistrate's Court has effect, in prescribed circumstances, as if it were a reference to the court hearing the appeal, and
- (b) this section has effect with any other prescribed modifications.

Undertaking in relation to person serving sentence in the Bailiwick.

67. (1) If –

- (a) Her Majesty's Procureur orders a person's extradition to a designated territory, and
- (b) the person is serving a sentence of imprisonment or

another form of detention in the Bailiwick,

Her Majesty's Procureur may make the order for extradition subject to the condition that extradition is not to take place before he or she receives an undertaking given on behalf of the designated territory in terms specified by him or her.

(2) The terms that may be specified by Her Majesty's Procureur in relation to a person accused in a designated territory of the commission of an offence include terms –

- (a) that the person be kept in custody until the conclusion of the proceedings against the person for the offence and any other offence in respect of which the person is permitted to be dealt with in the designated territory, and
- (b) that the person be returned to the Bailiwick on the conclusion of those proceedings to serve the remainder of his or her sentence.

(3) The terms that may be specified by Her Majesty's Procureur in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in a designated territory include terms that the person be returned to the Bailiwick to serve the remainder of his or her sentence after serving any sentence imposed on that person in the designated territory for –

- (a) the offence, and
- (b) any other offence in respect of which the person is

permitted to be dealt with in the designated territory.

(4) Subsections (5) and (6) apply if Her Majesty's Procureur makes an order for extradition subject to a condition under subsection (1).

(5) If Her Majesty's Procureur does not receive the undertaking before the end of the period of 21 days commencing on the day on which he or she makes the order, and the person applies to the Royal Court to be discharged, the court shall order that the person be discharged.

(6) If Her Majesty's Procureur receives the undertaking before the end of that period –

- (a) in a case where section 61 (relating to the time limit for extradition if there is no appeal) applies, the period of 28 days specified in section 61(1) for the person's extradition to the designated territory concerned shall commence on the day on which Her Majesty's Procureur receives the undertaking, and
- (b) in a case where section 62 (relating to the time limit for extradition if there is an appeal) applies, the period of 28 days specified in section 62(2) for the person's extradition to the designated territory concerned shall commence on the day on which the decision on the appeal becomes final (within the meaning of that section) or the day on which Her Majesty's Procureur receives the undertaking, whichever is later.

Withdrawal of request for extradition

Withdrawal of request before end of extradition hearing before Magistrate's Court.

68. (1) If, at any time in the period to which subsection (2) refers, the Magistrate's Court is informed by Her Majesty's Procureur that a request for a person's extradition has been withdrawn, the Magistrate's Court must order that the person be discharged.

(2) The period to which this section refers is the period –

- (a) commencing when the person first appears or is brought before the Magistrate's Court following the person's arrest, and
- (b) ending when the Magistrate's Court orders the person to be discharged or sends the case to Her Majesty's Procureur for a decision as to whether the person is to be extradited.

(3) If the person is not before the Magistrate's Court at the time when the Magistrate's Court orders that the person be discharged, the Judge shall inform the person of the order as soon as practicable.

Withdrawal of request after case sent to Her Majesty's Procureur.

69. If, at any time in the period –

- (a) commencing when the Magistrate's Court sends the case to Her Majesty's Procureur for a decision as to whether the

person is to be extradited, and

- (b) ending when the person is extradited in pursuance of the request for extradition or is discharged,

Her Majesty's Procureur is informed that the request for the person's extradition has been withdrawn, he or she must order that the person be discharged.

Withdrawal of request while application or appeal to Royal Court pending.

70. (1) If at any time in the period –

- (a) commencing when notice of an application for leave to appeal to the Royal Court is given by the person whose extradition is requested or by a person acting on behalf of the designated territory to which the person's extradition is requested, and
- (b) ending with the relevant day.

(2) For the purposes of this section, the "**relevant day**" is –

- (a) if the Royal Court refuses leave to appeal to it, the day on which the decision to refuse leave becomes final,
- (b) if leave to appeal is given but proceedings on the appeal are discontinued, the day of discontinuance,
- (c) if leave to appeal is given and proceedings on the appeal are not discontinued, the day on which the court

makes its decision on the appeal.

(3) For the purposes of subsection (2)(a), the decision to refuse leave becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal (ignoring any power of a court to grant leave to take a step out of time).

(4) If the appeal is under section 45 or section 50 (relating to appeals by persons whose extradition is requested), the Royal Court shall –

(a) order the person's discharge, and

(b) quash the order for the person's extradition, if Her Majesty's Procureur has ordered the person's extradition.

(5) If the application or appeal is under section 47 or section 52, the Royal Court shall dismiss the application or appeal.

(6) If the person is not before the Royal Court at the time when the court orders his or her discharge, the Court shall inform the person of the order as soon as practicable.

Withdrawal of request while appeal to Privy Council pending.

71. (1) If at any time in the period –

(a) commencing when leave to appeal to the Privy Council is granted to the person whose extradition is requested or a person acting on behalf of the designated territory

to which that extradition is requested, and

- (b) ending when proceedings on the appeal are abandoned or the Privy Council makes its decision on the appeal,

the Privy Council is informed by Her Majesty's Procureur that a request for a person's extradition has been withdrawn, the Privy Council shall take the steps specified in subsection (2) or (3) (as the case requires).

(2) If the appeal is brought by the person whose extradition is requested, the Privy Council shall –

- (a) order that the person be discharged, and
- (b) quash the order for the person's extradition, in a case where the appeal was against a decision of the Royal Court to dismiss an appeal under section 45 or section 50 (appeals by persons whose extradition is requested).

(3) If the appeal is brought by a person acting on behalf of the designated territory, the Privy Council shall dismiss the appeal.

(4) If the person whose extradition is requested is not before the Privy Council at the time when it orders that the person be discharged, the Privy Council shall inform the person of the order as soon as practicable.

Consent to extradition

General provisions as to consent to extradition.

72. (1) A person arrested under a warrant issued under section 7 may consent to being extradited to the designated territory to which extradition is requested.

(2) A person arrested under a provisional warrant may consent to being extradited to the designated territory in which the person is accused of the commission of an offence or is alleged to have been convicted of an offence.

(3) Consent under this section must be given in writing, and is irrevocable.

(4) If legal aid is available to a person arrested under a warrant issued under section 7 or a person arrested under a provisional warrant, such a person must be informed of his or her right to apply for legal aid, and be given the opportunity to apply for legal aid, before that person may give his or her consent to being extradited.

(5) In this section, "**legal aid**" means representation for the purposes of criminal proceedings provided under a scheme made under the Legal Aid (Bailiwick of Guernsey) Law, 2003^e.

Consent to extradition before case sent to Her Majesty's Procureur.

73. (1) If a person consents under section 72 to being extradited before the person's case is sent to Her Majesty's Procureur for his or her decision as to whether the person is to be extradited, the consent must be given before the

^e Order in Council No. VI of 2004; as amended by Ordinance No. XXXIII of 2003; No. XXXIX of 2015; No. IX of 2016; Nos. XXVI and XLII of 2018.

Magistrate's Court, in a manner to be prescribed by rules of court, and the following provisions of this section apply.

(2) If the Magistrate's Court has not under section 11 or section 12 fixed a date on which the extradition hearing is to begin, the Magistrate's Court is not required to do so.

(3) If the extradition hearing has begun, the Magistrate's Court is no longer required to proceed or continue proceeding under any of sections 16 to 33 (relating to the extradition hearing).

(4) The Magistrate's Court shall send the case to Her Majesty's Procureur for a decision as to whether the person is to be extradited.

Consent to extradition after case sent to Her Majesty's Procureur.

74. If a person consents to being extradited under section 72 after the person's case is sent to Her Majesty's Procureur for a decision as to whether the person is to be extradited, the consent shall be given before Her Majesty's Procureur.

Competing extradition requests

Competing extradition requests.

75. (1) This section applies if –

- (a) Her Majesty's Procureur receives a valid request for a person's extradition to a designated territory,
- (b) the person is in the Bailiwick, and

- (c) before the person is extradited in pursuance of the request or discharged, Her Majesty's Procureur receives another valid request for the person's extradition.

(2) If neither of the requests has been disposed of, Her Majesty's Procureur may order proceedings (or further proceedings) on one of the requests to be deferred until the other request has been disposed of.

(3) If an order for a person's extradition has been made in pursuance of the request under consideration, Her Majesty's Procureur may order the person's extradition in pursuance of that request to be deferred until the other request has been disposed of.

(4) In applying this section, Her Majesty's Procureur shall take account of –

- (a) the relative seriousness of the offences concerned,
- (b) the place where each offence was committed (or was alleged to have been committed),
- (c) the date when each offence was committed (or was alleged to have been committed),
- (d) the date when each request was received, and
- (e) whether, in the case of each offence, the person is alleged to be accused of its commission (but not

convicted of the offence), or is alleged to be unlawfully at large after conviction of the offence.

Post-extradition matters

Consent to dealing with another offence.

76. (1) This section applies if –

- (a) a person is extradited to a designated territory, and
- (b) Her Majesty's Procureur receives a valid request for his or her consent to the person being dealt with in the designated territory for an offence other than the offence in respect of which the person was extradited.

(2) A request for consent is valid if it is made by an authority of the designated territory, and if Her Majesty's Procureur believes that the authority has the function in that designated territory of making requests for the consent to which subsection (1)(b) refers.

(3) Her Majesty's Procureur must serve notice on the person that he or she has received the request for consent, unless he or she is satisfied that it would be impracticable to do so.

(4) Her Majesty's Procureur shall decide whether the offence is an extradition offence.

(5) If Her Majesty's Procureur decides that the offence is not an extradition offence, he or she must refuse to give consent.

(6) If Her Majesty's Procureur decides that the offence is an extradition offence, he or she must decide whether the Magistrate's Court would send the case to Her Majesty's Procureur under sections 17 to 33 (for his or her decision whether the person should be extradited) if –

- (a) the person were in the Bailiwick, and
- (b) the Magistrate's Court were required to proceed under section 17 in respect of the offence for which Her Majesty's Procureur's consent is requested.

(7) If Her Majesty's Procureur decides the question in subsection (6) in the negative, he or she must refuse to give consent.

(8) If Her Majesty's Procureur decides that question in the affirmative, he or she must decide whether, if the person were in the Bailiwick, the person's extradition in respect of the offence would be prohibited under any of sections 36, 37 and 38.

(9) If Her Majesty's Procureur decides the question in subsection (8) in the affirmative, he or she must refuse to give consent.

(10) If Her Majesty's Procureur decides that question in the negative, he or she may give consent.

Consent to further extradition to designated territory.

77. (1) This section applies if –

- (a) a person is extradited to a designated territory (the requesting territory), and
- (b) Her Majesty's Procureur receives a valid request for his or her consent to the person's extradition to another designated territory for an offence other than the offence in respect of which the person was extradited.

(2) A request for consent is valid if it is made by an authority that is an authority of the requesting territory, and Her Majesty's Procureur believes that the authority has the function in that territory of making requests for the consent to which subsection (1)(b) refers.

(3) Her Majesty's Procureur must serve notice on the person that he or she has received the request for consent, unless he or she is satisfied that it would be impracticable to do so.

(4) Her Majesty's Procureur must decide whether the offence is an extradition offence in relation to the designated territory to which subsection (1)(b) refers.

(5) If Her Majesty's Procureur decides that the offence is not an extradition offence, he or she must refuse to give consent.

(6) If Her Majesty's Procureur decides that the offence is an extradition offence, Her Majesty's Procureur must decide whether the Magistrate's Court would send the case to him or her under sections 17 to 33 for Her Majesty's Procureur's decision whether the person should be extradited if –

- (a) the person were in the Bailiwick, and
- (b) the Magistrate's Court were required to proceed under section 17 in respect of the offence for which Her Majesty's Procureur's consent is requested.

(7) If Her Majesty's Procureur decides the question in subsection (6) in the negative, he or she must refuse to give consent.

(8) If Her Majesty's Procureur decides that question in the affirmative, he or she must decide whether, if the person were in the Bailiwick, the person's extradition in respect of the offence would be prohibited under any of sections 36, 37 and 38.

(9) If Her Majesty's Procureur decides the question in subsection (8) in the affirmative, he or she must refuse to give consent.

(10) If Her Majesty's Procureur decides that question in the affirmative, he or she may give consent.

Service of notices under sections 76 and 77.

78. Service of a notice on a person under either of sections 76 and 77 may be effected –

- (a) by delivering the notice to the person,
- (b) by leaving it for the person with another person at his or her last known or usual place of abode, or

- (c) by sending it to the person to be served, by post in a letter addressed to the person at that place of abode.

Return of person to the Bailiwick to serve remainder of sentence.

79. (1) This section applies to a person who –

- (a) is serving a sentence of imprisonment or another form of detention in the Bailiwick,
- (b) is extradited to a designated territory, and
- (c) is subsequently returned to the Bailiwick to serve the remainder of that sentence.

(2) A person to whom this section applies who is not entitled to be released from detention pursuant to the sentence –

- (a) is liable to be detained in pursuance of his or her sentence, and
- (b) if at large, shall be treated as being unlawfully at large.

(3) Time during which, as a result of his or her extradition, the person was not in the Bailiwick does not count as time served by the person as part of his or her sentence.

(4) Subsection (3) does not apply if –

- (a) the person was extradited for the purpose of being

prosecuted for an offence, and

- (b) the person has not been convicted of the offence or of any other offence in respect of which he or she was permitted to be dealt with in the designated territory.

(5) In a case to which subsection (4) refers, time during which as a result of his or her extradition the person was not in the Bailiwick counts as time served by the person as part of the person's sentence if (but only if) it was spent in custody in connection with the offence or any other offence in respect of which he or she was permitted to be dealt with in the designated territory.

(6) In a case where the person is entitled to be released from detention on licence pursuant to the sentence –

- (a) if the person was released on licence at the time of extradition, the licence is suspended until the person's return,
- (b) if the person was not released on licence at that time, subsections (7) to (9) apply in relation to the person ("the offender").

(7) The offender is liable to be detained, on return, in any place in which the offender could have been detained pursuant to the sentence before the time of extradition.

(8) An officer of police may –

- (a) take the offender into custody, and
- (b) convey the offender to the place mentioned in subsection (7).

(9) The offender must be released on licence within the period of 5 days beginning when the offender is taken (or retaken) into custody under this section.

Persons serving sentences outside territory where convicted.

80. (1) This section applies if –

- (a) a request is made for a person's extradition to a designated territory, and the request contains the statement referred to in subsection (2), or
- (b) a provisional warrant for a person's arrest is sought on behalf of a designated territory, and information given in writing and on oath contains the statement referred to in subsection (2).

(2) The statement is one that the person –

- (a) is alleged to be unlawfully at large from a prison in one territory (the imprisoning territory) in which the person was serving a sentence after conviction of an offence by a court in another territory (the convicting territory), and

- (b) was serving the sentence in pursuance of international arrangements for prisoners sentenced in one territory to be repatriated to another territory in order to serve their sentences.

(3) If the designated territory is either the imprisoning territory or the convicting territory –

- (a) section 6(3) shall have effect as if the reference in that provision to the statement to which that section refers were a reference to the statement to which subsection (2) of this section refers, and

- (b) section 9(1) shall have effect as if the reference in that provision to a person to whom subsection (2) of that section refers were a reference to the person to whom subsection (1)(b) of this section refers.

(4) If the designated territory is the imprisoning territory –

- (a) sections 7(2)(a), 9(3)(a) and 16(4)(b) shall have effect as if the references in those provisions to an extradition offence were references to an extradition offence in relation to the convicting territory,

- (b) sections 10(7)(b) and 72(2) shall have effect as if the references in those provisions to the designated territory in which the person is accused of the commission of an offence or is alleged to have been

convicted of an offence were references to the imprisoning territory,

- (c) section 10(10)(b) shall have effect as if the reference in that provision to the designated territory were a reference to the imprisoning territory,
- (d) sections 3, 4, 16(2)(e) and 67(3) shall have effect as if the references in those provisions to a designated territory were references to the convicting territory, and
- (e) section 27(5) shall have effect as if after "entitled" there were inserted "in the convicting territory".

PART III

RE-EXTRADITION FROM THE BAILIWICK

Conditions for re-extradition.

81. (1) Section 82 applies in relation to a person if the five conditions in sections (2), (3), (4), (5) and (6) of this section are satisfied.

(2) The first condition is that the person was extradited to a designated territory in accordance with Part II.

(3) The second condition is that the person was serving a sentence of imprisonment or another form of detention in the Bailiwick ("the Bailiwick sentence") before the person was extradited.

(4) The third condition is that the request in pursuance of which

the person was extradited contained a statement that the person was accused of the commission of an offence.

(5) The fourth condition is that a certificate issued by a judicial authority of the designated territory shows that –

- (a) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment ("the overseas sentence") was imposed on the person in that designated territory, and
- (b) the overseas sentence was imposed on the person in respect of -
 - (i) the offence specified in the warrant or request, or
 - (ii) any other offence committed before his or her extradition in respect of which the person was permitted to be dealt with in that designated territory.

(6) The fifth condition is that before serving the overseas sentence the person was returned to the Bailiwick to serve the remainder of the Bailiwick sentence.

Initial stages of re-extradition hearing.

82. (1) If this section applies in relation to a person, the person must be brought as soon as practicable after the relevant time before the Magistrate's

Court, and the Magistrate's Court shall decide whether he or she is to be re-extradited to the designated territory in which the overseas sentence was imposed.

(2) The relevant time is the time at which the person would otherwise be released from detention pursuant to the Bailiwick sentence (whether or not on licence).

(3) If subsection (1) is not complied with, and the person applies to the Magistrate's Court to be discharged, the court must order that the person be discharged.

(4) The person shall be treated as continuing in legal custody until he or she is brought before the Magistrate's Court under subsection (1) or is ordered to be discharged under subsection (3).

(5) If the person is brought before the Magistrate's Court under subsection (1), the Magistrate's Court must decide whether or not the territory in which the overseas sentence was imposed is a designated territory.

(6) If the Magistrate's Court decides that the territory is a designated territory, section 83 applies.

(7) If the Magistrate's Court decides that the territory is not a designated territory, it must order the person's discharge.

Applicability of Law to re-extradition.

83. (1) If this section applies, this Law applies as it would if –

(a) a valid request for the person's extradition to the

designated territory concerned had been made under Part II,

- (b) the request contained a statement that the person was alleged to be unlawfully at large after conviction of the relevant offence,
- (c) the relevant offence were specified in the request,
- (d) the hearing at which the Magistrate's Court is to make the decision referred to in section 82(1) were the extradition hearing, and
- (e) the proceedings before the Magistrate's Court were under Part II.

(2) Part II shall apply to proceedings under this Part, subject to the modifications in Schedule 2.

(3) The relevant offence is the offence in respect of which the overseas sentence is imposed.

Discharge not to affect conditions of release.

84. A person's discharge as a result of section 82 or section 83 does not affect any conditions on which the person is released from detention pursuant to the Bailiwick sentence.

PART IV
EXTRADITION TO THE BAILIWICK

Her Majesty's Procureur may request extradition to the Bailiwick.

85. Her Majesty's Procureur may request an appropriate authority of any other territory to extradite a person to the Bailiwick.

Commonwealth countries and Hong Kong.

86. (1) Subject to section 115, if –

- (a) a person is extradited to the Bailiwick from a designated territory under a law of the designated territory corresponding to this Law, and
- (b) the designated territory is a Commonwealth country, a British overseas territory or the Hong Kong Special Administrative Region of the People's Republic of China,

the person may be dealt with in the Bailiwick, for an offence committed before the person's extradition, only if the offence is one to which subsection (3) refers or the protected period has ended.

(2) A person is dealt with in the Bailiwick for an offence if –

- (a) the person is tried in the Bailiwick for the offence, or
- (b) the person is detained with a view to trial in the Bailiwick for the offence.

(3) The offences to which this section refers are –

- (a) the offence in respect of which the person is extradited,
- (b) a lesser offence disclosed by the information provided to the designated territory in respect of that offence, and
- (c) an offence in respect of which consent to the person being dealt with is given by or on behalf of the relevant authority.

(4) The protected period is 45 days commencing on the first day after the person's extradition to the Bailiwick on which the person is given an opportunity to leave the Bailiwick.

(5) An offence is a lesser offence in relation to another offence if the maximum punishment for it is less severe than the maximum punishment for the other offence.

(6) The relevant authority is –

- (a) if the person has been extradited from a Commonwealth country, the government of that country,
- (b) if the person has been extradited from a British overseas territory, the person administering the territory, and

- (c) if the person has been extradited from the Hong Kong Special Administrative Region of the People's Republic of China, the government of the Region.

Remission of punishment for other offences.

87. If -

- (a) a person is extradited to the Bailiwick from a designated territory under a law of the designated territory corresponding to this Law,
- (b) before the person's extradition, he or she has been convicted of an offence in the Bailiwick, and
- (c) the person has not been extradited in respect of that offence,

the sentence for the offence shall be treated as served, but the person's conviction for the offence shall be treated as a conviction for all other purposes.

Return of person acquitted or not tried.

88. (1) If -

- (a) a person is accused in the Bailiwick of the commission of an offence,
- (b) the person is extradited to the Bailiwick in respect of the offence from a designated territory under a law of the designated territory corresponding to this Law, and

- (c) the condition to which subsection (2) refers or the condition to which subsection (3) refers is satisfied,

Her Majesty's Procureur shall, if asked to do so by the person, arrange for the person to be sent back to the designated territory free of charge and with as little delay as possible.

- (2) The condition to which this section refers is that -

- (a) proceedings against the person for the offence are not begun before the end of the period of six months commencing on the day on which the person arrives in the Bailiwick on his or her extradition, and
- (b) before the end of the period of three months commencing immediately after the end of the period in paragraph (a), the person asks Her Majesty's Procureur to return him or her to the designated territory from which the person was extradited.

- (3) The condition to which this section refers is that -

- (a) at the person's trial for the offence, he or she is acquitted or discharged, and
- (b) before the end of the period of three months commencing immediately after the date of his or her acquittal or discharge, the person asks Her Majesty's

Procureur to return him or her to the designated territory from which the person was extradited.

Return to extraditing territory to serve sentence.

89. (1) This section applies if-

- (a) a person is extradited to the Bailiwick from a territory for the purposes of being prosecuted for an offence, and
- (b) the person's extradition is made subject to a condition that an undertaking is given by or on behalf of the Bailiwick as to the person's return to the territory.

(2) Her Majesty's Procureur may give an undertaking to a person acting on behalf of the territory as to the person's return to the territory.

(3) The terms which may be included by Her Majesty's Procureur in an undertaking given under subsection (2) in relation to a person include terms that if the person is convicted of the offence and a sentence of imprisonment or another form of detention is imposed in respect of it, the person is to be returned to the territory to serve the sentence.

(4) A person who is to be returned to a territory by virtue of an undertaking given under subsection (2) must be returned as soon as is reasonably practicable after the sentence is imposed and any other proceedings in respect of the offence are concluded.

(5) If subsection (4) is complied with the sentence for the offence is treated as served but the person's conviction for the offence must be treated as a conviction for all other purposes.

(6) The sentence for the offence is treated as served under subsection (5) only in so far as it consists of the sentence of imprisonment or another form of detention mentioned in subsection (3).

(7) Subsection (8) applies if-

- (a) subsection (4) is not complied with, and
- (b) the person applies to the court which imposed the sentence to expedite return to the territory.

(8) The court must order return by such date as is specified in the order unless reasonable cause is shown for the delay.

(9) If a person is to be returned by virtue of an undertaking given under subsection (2), an officer of police may-

- (a) remove the person from any prison or other institution where the person is detained,
- (b) keep the person in custody until returned, and
- (c) convey the person to the territory to which the person is to be returned.

(10) Nothing in this section requires the return of a person to a territory in a case in which Her Majesty's Procureur is not satisfied that the return is compatible with the Convention rights within the meaning of the Human Rights Law.

PART V

POLICE POWERS

Search and seizure warrants.

90. (1) The Bailiff may, on an application made by an officer of police, issue a search and seizure warrant if he or she is satisfied that the requirements for the issue of a search and seizure warrant are fulfilled.

(2) An application for a search and seizure warrant under this section must state -

- (a) that the extradition of a person specified in the application is sought under Part II or Part III,
- (b) that the warrant is sought in relation to premises specified in the application,
- (c) that the warrant is sought in relation to material, or material of a description, specified in the application, and
- (d) that the material, or material of that description, is believed to be on the premises.

(3) The application must also state that the person is accused in a designated territory of the commission of an offence that is specified in the application and is an extradition offence.

(4) A search and seizure warrant is a warrant authorising an officer of police –

(a) to enter and search the premises specified in the application for the warrant, and

(b) to seize and retain any material found there which falls within subsection (5).

(5) Material falls within this subsection if -

(a) it would be likely to be admissible evidence at a trial in the Bailiwick for the offence specified in the application for the warrant (on the assumption that conduct constituting that offence would constitute an offence in the Bailiwick), and

(b) it does not consist of or include items subject to legal privilege, or special material.

(6) The requirements for the issue of a search and seizure warrant are that there are reasonable grounds for believing -

(a) that the offence specified in the application has been committed by the person specified in the application,

- (b) that the person is in the Bailiwick, or is on his or her way to the Bailiwick,
 - (c) that the offence is an extradition offence,
 - (d) that there is material specified in subsection (5) on premises specified in the application, and
 - (e) that any of the conditions to which subsection (7) refers is satisfied.
- (7) The conditions to which this section refers are -
- (a) that it is not practicable to communicate with a person entitled to grant entry to the premises,
 - (b) that it is practicable to communicate with a person entitled to grant entry to the premises, but it is not practicable to communicate with a person entitled to grant access to the material to which subsection (6)(d) refers,
 - (c) that entry to the premises will not be granted unless a warrant is produced, or
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless an officer of police arriving at the premises can secure immediate entry to them.

Production orders.

91. (1) The Bailiff may, on an application made by an officer of police, make a production order if satisfied that the requirements for the making of a production order are fulfilled.

(2) An application for a production order under this section must state -

- (a) that the extradition of a person specified in the application is sought under Part II or Part III,
- (b) that the order is sought in relation to premises specified in the application,
- (c) that the order is sought in relation to material, or material of a description, specified in the application,
- (d) that the material is special material, and
- (e) that a person specified in the application appears to be in possession or control of the material.

(3) The application must also state that a person specified in the application is accused in a designated territory of the commission of an offence that -

- (a) is specified in the application, and
- (b) is an extradition offence.

(4) A production order is an order either -

- (a) requiring the person whom the application for the order specifies as appearing to be in possession or control of special material to produce it to an officer of police (within the period stated in the order) for the officer to take away, or
- (b) requiring that person to give an officer of police access to the material within the period stated in the order.

(5) The period stated in a production order shall be a period of 7 days commencing on the day on which the order is made, unless it appears to the Bailiff that a longer period would be appropriate.

(6) Production orders shall have effect as if they were orders of the Royal Court.

Requirements for making of production order.

92. (1) The requirements for the making of a production order are that there are reasonable grounds for believing -

- (a) that the offence specified in the application has been committed by the person so specified,
- (b) that the person is in the Bailiwick, or is on his or her way to the Bailiwick,

- (c) that the offence is an extradition offence,
- (d) that there is material that consists of or includes special material on premises specified in the application, and
- (e) that the material would be likely to be admissible evidence at a trial in the Bailiwick for the offence specified in the application (on the assumption that conduct constituting that offence would constitute an offence in the Bailiwick).

(2) It must also appear that other methods of obtaining the material -

- (a) have been tried without success, or
- (b) have not been tried because they were bound to fail.

(3) It must also be in the public interest that the material should be produced or that access to it should be given.

Electronically stored information.

93. (1) This section applies if any of the special material that is specified in an application for a production order consists of information stored in any electronic form.

(2) If the order requires a person to produce the material to an officer of police to take away, it has effect as an order to produce the material in a form –

(a) in which it can be taken away by the officer of police,
and

(b) in which it is visible and legible, or from which it can
readily be produced in a visible and legible form.

(3) If the order requires a person to give an officer of police access
to the material, it has effect as an order to give the officer of police access to the
material -

(a) in a form in which it is visible and legible, or

(b) in a form from which it can readily be produced in a
visible and legible form.

Warrants: special material.

94. (1) The Bailiff may, on an application made by an officer of police,
issue a warrant under this section if satisfied -

(a) that the requirements for the making of a production
order are fulfilled, and

(b) that any of the conditions to which subsection (4) refers
is satisfied.

(2) An application for a warrant under this section must state -

(a) that the extradition of a person specified in the

application is sought under Part II or Part III,

- (b) that the warrant is sought in relation to premises specified in the application,
- (c) that the warrant is sought in relation to material, or material of a description, specified in the application, and
- (d) that the material is special material.

(3) The application must also state that the person is accused in a designated territory of the commission of an offence that is specified in the application and is an extradition offence.

(4) The conditions to which this section refers are -

- (a) that it is not practicable to communicate with a person entitled to grant entry to the premises,
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises, but it is not practicable to communicate with a person entitled to grant access to the special material to which section 92(1)(d) refers, and
- (c) that the material contains information that is subject to a restriction on disclosure or to an obligation of secrecy contained in an enactment (whether passed or made

before or after the commencement of this section) and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued.

(5) A warrant under this section authorises an officer of police to enter and search the premises specified in the application for the warrant, and to seize and retain any material found there that is special material to which subsection (6) refers.

(6) This subsection refers to material that would be likely to be admissible in evidence at a trial in the Bailiwick for the offence specified in the application for the warrant, if conduct constituting the offence would constitute an offence in the Bailiwick.

Search and seizure without warrant

Entry and search to effect arrest.

95. (1) If an officer of police has power to arrest a person under an extradition arrest warrant, and has reasonable grounds for believing that the person is on any premises, he or she may enter and search those premises for the purpose of exercising the power of arrest.

(2) The power to search that is conferred by subsection (1) is exercisable only to the extent reasonably required for the purpose of exercising the power of arrest.

(3) An officer of police who has entered premises in exercise of the power conferred by subsection (1) may seize and retain anything that is on the premises, if he or she has reasonable grounds for believing -

- (a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence, and
 - (b) that it is necessary to seize it in order to prevent its being concealed, lost, damaged, altered or destroyed.
- (4) An offence includes an offence committed outside the Bailiwick.
- (5) Where the premises contain two or more separate dwellings, the power to enter and search that is conferred by subsection (1) is exercisable only in respect of -
 - (a) parts of the premises that the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other dwelling comprised in the premises, and
 - (b) any dwelling that is comprised in the premises, if the officer of police has reasonable grounds for believing that the person to whom the search relates may be in that dwelling.

Entry and search of premises on arrest.

96. (1) This section applies if a person has been arrested under an extradition arrest warrant at a place other than a police station.

(2) An officer of police may enter and search any premises in which the person was present at the time of the arrest, or immediately before the arrest, if the officer of police has reasonable grounds for believing -

- (a) where the person has not been convicted of the offence to which subsection (3) refers, that there is on the premises evidence (other than items subject to legal privilege) relating to the offence, or
- (b) where in any case, there is on the premises evidence (other than items subject to legal privilege) relating to the identity of the person.

(3) The offence to which this section refers is -

- (a) the offence in respect of which extradition is requested, if the arrest was under a warrant issued under section 7, or
- (b) the offence of which the person is accused, if the arrest was under a provisional warrant.

(4) The power to search that is conferred by subsection (2) -

- (a) is, if the person has not been convicted of the offence, a power to search for evidence (other than items subject to legal privilege) relating to the offence, and
- (b) is, in any case, a power to search for evidence (other

than items relating to legal privilege) relating to the identity of the person.

(5) The power to search that is conferred by subsection (2) is exercisable only to the extent that is reasonably required for the purpose of discovering evidence in respect of which the power is available by virtue of subsection (4).

(6) An officer of police may seize and retain anything for which he or she may search by virtue of subsection (4).

(7) An officer of police who has entered premises in exercise of the power that is conferred by subsection (2) may seize and retain anything that is on the premises if he or she has reasonable grounds for believing -

(a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence, and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(8) An offence includes an offence committed outside the Bailiwick.

(9) If the premises contain two or more separate dwellings, the power that is conferred by subsection (2) is exercisable only in respect -

(a) any dwelling that is comprised in the premises and is a

dwelling in which the arrest took place or the person was present immediately before his or her arrest, and

- (b) parts of the premises which the occupier of any such dwelling uses in common with the occupier of any other dwelling comprised in the premises.

Search of person on arrest.

97. (1) This section applies if a person has been arrested under an extradition arrest warrant at a place other than a police station.

(2) An officer of police may search the person if the officer of police has reasonable grounds for believing that the person may present a danger to himself or herself or others.

(3) An officer of police may search the person if the officer of police has reasonable grounds for believing that the person may have concealed on his or her person anything -

- (a) that the person might use to assist the person to escape from lawful custody, or
- (b) that might be evidence relating to an offence or the identity of the person.

(4) The power to search that is conferred by subsection (3) –

- (a) is a power to search for anything falling within either of paragraphs (a) and (b) of that subsection, and

(b) is exercisable only to the extent that is reasonably required for the purpose of discovering such a thing.

(5) The powers conferred by subsections (2) and (3) do not authorise an officer of police to require a person to remove any clothing in public, other than an outer coat, jacket or gloves.

(6) The powers conferred by subsections (2) and (3) authorise a search of a person's mouth.

(7) An officer of police who is searching a person in exercise of the power that is conferred by subsection (2) may seize and retain anything that the officer of police finds, if he or she has reasonable grounds for believing that the person searched ("P") might use it to cause physical injury to P or to any other person.

(8) An officer of police searching a person in exercise of the power conferred by subsection (3) may seize and retain anything the officer of police finds, if the officer of police has reasonable grounds for believing -

(a) that the person might use it to assist him or her to escape from lawful custody, or

(b) that it is evidence of an offence or of the identity of the person or has been obtained in consequence of the commission of an offence.

(9) An offence includes an offence committed outside the

Bailiwick.

(10) Nothing in this section affects the powers conferred by section 44 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^f (relating to the stopping and searching of suspected terrorists and the seizure and retention of suspected evidence).

Entry and search of premises after arrest.

98. (1) This section applies if a person has been arrested under an extradition arrest warrant.

(2) An officer of police may enter and search any premises occupied or controlled by the person, if the officer of police has reasonable grounds for believing -

- (a) if the person has not been convicted of the offence to which subsection (3) refers, that there is on the premises evidence (other than items subject to legal privilege) relating to the offence, or
- (b) in any case, there is on the premises evidence (other than items subject to legal privilege) relating to the identity of the person.

^f Order in Council No. XVI of 2002; as amended by Order in Council No. VII of 2005; No. XIII of 2006; No. XIII of 2010; No. XI of 2011; No. XIV of 2012; Ordinance No. XXXIII of 2003; No. XLVI of 2007; Nos. XIII, XX and XXXVII of 2010; No. XXIX of 2014; No. LIV of 2014; No. IX of 2016; No. XXVI of 2018; No. XLV of 2018; G.S.I. No. 16 of 2003; G.S.I. No. 41 of 2005; and G.S.I. No. 5 of 2017.

(3) The offence to which this subsection refers is -

- (a) the offence in respect of which extradition is requested, if the arrest was under a warrant issued under section 7, and
- (b) the offence of which the person is accused, if the arrest was under a provisional warrant.

(4) The power to search that is conferred by subsection (2) -

- (a) is, if the person has not been convicted of the offence, a power to search for evidence (other than items subject to legal privilege) relating to the offence, and
- (b) is, in any case, a power to search for evidence (other than items relating to legal privilege) relating to the identity of the person.

(5) The power to search that is conferred by subsection (2) is exercisable only to the extent that is reasonably required for the purpose of discovering evidence in respect of which the power is available by virtue of subsection (4).

(6) An officer of police may seize and retain anything for which the officer of police may search by virtue of subsections (4) and (5).

(7) An officer of police who has entered premises in exercise of the power that is conferred by subsection (2) may seize and retain anything that is on

the premises if the officer of police has reasonable grounds for believing -

- (a) that it has been obtained in consequence of the commission of an offence, or it is evidence in relation to an offence, and

- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(8) An offence includes an offence committed outside the Bailiwick.

(9) The powers to enter, search and seize that are conferred by subsection (2) and (6) may be exercised only if a relevant officer has given written authorisation for its exercise, or -

- (a) the power is exercised before the person arrested is taken to a police station, and

- (b) the presence of the person at a place other than a police station is necessary for the effective exercise of the power to search.

(10) For the purposes of this section "**a relevant officer**" means –

- (a) a member of the Island Police Force who holds the rank of inspector or above,

- (b) a member of any police force which may be established

by the States of Alderney who holds the rank of inspector or above, or

- (c) a customs officer of the grade of senior investigation officer or above.

Treatment following arrest

Fingerprints and samples.

99. (1) If a person has been arrested under an extradition arrest warrant and is detained at a police station, fingerprints may be taken from the person only if they are taken by an officer of police -

- (a) with the appropriate consent given in writing, or
- (b) under subsection (3).

(2) If a person has been arrested under an extradition arrest warrant and is detained at a police station, a non-intimate sample may be taken from the person only if it is taken by an officer of police -

- (a) with the appropriate consent given in writing, or
- (b) under subsection (3).

(3) Fingerprints or a non-intimate sample may be taken from the person without the appropriate consent only if a relevant officer authorises the fingerprints or sample to be taken.

(4) For the purposes of this section, "**relevant officer**" has the meaning given in section 98.

Searches and examinations.

100. (1) If a person -

- (a) has been arrested under an extradition arrest warrant,
and
- (b) is detained at a police station,

the person may, on the authorisation of an officer of police of a rank not lower than that of inspector, be searched or examined, or both, for the purpose of facilitating the ascertainment of the person's identity.

(2) An identifying mark found on a search or examination under this section may be photographed -

- (a) with the appropriate consent, or
- (b) without the appropriate consent, if that consent is withheld or it is not practicable to obtain it.

(3) The only persons who may carry out searches or examinations, or take photographs, under this section are -

- (a) officers of police, and
- (b) persons designated for the purposes of this section by

the Chief Officer of Police or the Chief Officer of Customs and Excise.

- (4) A person may not under this section -
 - (a) carry out a search or examination of a person of the opposite sex, or
 - (b) take a photograph of any part of the body of a person of the opposite sex.
- (5) An intimate search may not be carried out under this section.
- (6) For the purposes of this section –
 - (a) ascertaining a person's identity includes ascertaining that he or she is not a particular person,
 - (b) taking a photograph includes using a process by means of which a visual image may be produced, and photographing a person shall be construed accordingly, and
 - (c) marks include features and injuries, and a mark is an identifying mark if its existence in a person's case facilitates the ascertainment of the person's identity.

Photographs.

101. (1) If a person has been arrested under an extradition arrest

warrant and is detained at a police station, the person may be photographed -

- (a) with the appropriate consent, or
- (b) without the appropriate consent, if that consent is withheld or it is not practicable to obtain it.

(2) A person proposing to take a photograph of a person under this section -

- (a) may, for the purpose of doing so, require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed, and
- (b) may, if the requirement is not complied with, remove the item or substance.

(3) The only persons who may take photographs under this section are -

- (a) officers of police, and
- (b) persons designated for the purposes of this section by the Chief Officer of Police.

Other treatment and rights.

102. (1) The Committee may by regulations apply the provisions to which subsection (2) refers to persons to whom subsection (3) refers, with such

modifications as are specified in the regulations.

- (2) This section refers to the following provisions of PPACE -
 - (a) section 62 (searches of detained persons),
 - (b) section 63 (intimate searches),
 - (c) section 64 (right to have someone informed when arrested), and
 - (d) section 66 (access to legal advice).
- (3) This section refers to any persons who -
 - (a) are arrested under extradition arrest warrants at police stations,
 - (b) are taken to police stations after being arrested elsewhere under extradition arrest warrants, or
 - (c) are detained at police stations after being arrested under extradition arrest warrants.

General

Delivery of seized property.

103. (1) This section applies to anything that has been seized or produced under this Part.

(2) An officer of police may deliver any such thing to a person who is or is acting on behalf of an authority if the officer of police has reasonable grounds for believing that the authority -

- (a) is an authority of the designated territory concerned, and
- (b) has functions such that it is appropriate for the thing to be delivered to it.

(3) If the seizure power was a warrant issued under this Part or the thing was produced under an order made under this Part, the designated territory concerned is the one specified in the application for the warrant or the order.

(4) If the seizure power was conferred by section 95(3), section 96(6) or (7), section 97(7) or (8), or section 98(6) or (7), the designated territory concerned is -

- (a) the designated territory to which a person's extradition is requested, where the applicable arrest power is a warrant issued under section 7, or
- (b) the designated territory in which a person is accused of the commission of an offence or has been convicted of an offence, where the applicable arrest power is a provisional warrant.

- (5) The applicable extradition arrest power is -
- (a) the extradition arrest power under which an officer of police had power of arrest, where the seizure power was conferred by section 95(3), or
 - (b) the extradition arrest power under which a person was arrested, where the seizure power was conferred by section 96(6) or (7), section 97(7) or (8) or section 98(6) or (7).

Codes of practice.

104. (1) The Committee may by regulations make codes of practice in connection with –

- (a) the exercise of the powers that are conferred by this Part,
- (b) the retention, use and return of anything seized or produced under a power that is conferred by this Part,
- (c) access to anything so seized or produced,
- (d) the taking of photographs and copies of anything so seized or produced, and
- (e) the retention, use, disclosure and destruction of any fingerprint, sample or photograph taken under a power conferred by this Part.

(2) When the Committee proposes to make a code of practice under this section, it shall publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(3) A failure by an officer of police to comply with a provision of a code issued under this section does not of itself make the officer of police liable to criminal or civil proceedings.

(4) A code issued under this section is admissible in evidence in proceedings under this Law, and shall be taken into account by a court in determining any question to which it appears to the court to be relevant.

Reasonable force.

105. A person may use reasonable force, if necessary, in the exercise of a power conferred by this Part.

PART VI
OTHER PROVISIONS

Proceedings on deferred request.

106. (1) If –

- (a) an order is made under this Law deferring proceedings on an extradition claim (the deferred claim) until another extradition claim in respect of the person has been disposed of, and

- (b) the other extradition claim is disposed of in the person's favour,

the Magistrate's Court may make an order for proceedings on the deferred claim to be cease to be deferred.

(2) No order under subsection (1) may be made after the end of the period of 21 days commencing on the day on which the other extradition claim is disposed of.

(3) If the person applies to the Magistrate's Court to be discharged, the Magistrate's Court may order that the person be discharged.

(4) If the person applies to the Magistrate's Court to be discharged, the Magistrate's Court must order the person's discharge if –

- (a) the period of 21 days to which subsection (2) refers has ended, and
- (b) it has not made an order under subsection (1) and has not ordered that the person be discharged.

(5) An extradition claim made in respect of a person is disposed of in a person's favour if either of the conditions referred to in section 108(1)(a) or (b) is met in respect of the person.

Proceedings where extradition deferred.

107. (1) If –

- (a) an order is made under this Law deferring a person's extradition in pursuance of an extradition claim (the deferred claim) until another extradition claim in respect of the person has been disposed of, and
- (b) the other extradition claim is disposed of in the person's favour,

the Magistrate's Court may make an order for the person's extradition in pursuance of the deferred claim to cease to be deferred.

(2) No order under subsection (1) may be made after the end of the period of 21 days commencing on the day on which the other extradition claim is disposed of.

(3) If the person applies to the Magistrate's Court to be discharged, the Magistrate's Court may order that the person be discharged.

(4) If the person applies to the Magistrate's Court to be discharged, the Magistrate's Court must order the person's discharge if –

- (a) the period of 21 days to which subsection (2) refers has ended, and
- (b) it has not made an order under subsection (1) and has not ordered that the person be discharged.

(5) An extradition claim made in respect of a person is disposed of in a person's favour if either of the conditions referred to in section 108(1(a) or (b)

is met in respect of the person.

Disposal of request for extradition.

108. (1) A request for a person's extradition is disposed of –

- (a) when an order is made for the person's discharge in respect of the request and there is no further possibility of an appeal,
- (b) when the person is taken to be discharged in respect of the request, or
- (c) when an order is made for the person's extradition in pursuance of the request and there is no further possibility of an appeal.

(2) There is no further possibility of an appeal against an order for a person's discharge or extradition –

- (a) when the period permitted for giving notice of application for leave to appeal to the Royal Court ends, if notice is not given before the end of that period,
- (b) when the decision of the Royal Court refusing leave to appeal to it becomes final,
- (c) when the decision of the Royal Court on the appeal becomes final, if there is no appeal to the Privy Council against that decision, or

- (c) when the decision of the Privy Council on the appeal is made, if there is such an appeal.

(3) The decision of the Royal Court refusing leave to appeal to it becomes final when, in accordance with rules of court, there is no further step that can be taken in relation to the application for leave to appeal.

- (4) The decision of the Royal Court on the appeal becomes final –

- (a) when the period permitted for applying to the Royal Court for leave to appeal to the Privy Council ends, if there is no such application,
- (b) when the period permitted for applying to the Privy Council for leave to appeal to it ends, if the Royal Court refuses leave to appeal and there is no application to the Privy Council for leave to appeal,
- (c) when the Privy Council refuses leave to appeal to it, or
- (d) at the end of the period of 28 days commencing on the day on which leave to appeal to the Privy Council is granted, if no such appeal is brought before the end of that period.

- (5) For the purposes of subsections (2) and (3) –

- (a) any power of a court to extend the period permitted for

giving notice of appeal or for applying for leave to appeal, and

- (b) any power of a court to grant leave to take a step out of time,

shall be disregarded.

Disposal of charge.

109. (1) A charge against a person is disposed of –

- (a) when the person is acquitted, or
- (b) if the person is convicted in respect of it, when there is no further possibility of an appeal against the conviction.

(2) There is no further possibility of an appeal against a conviction –

- (a) when the period permitted for giving notice of application for leave to appeal to the Court of Appeal against the conviction ends, if the leave of the Court of Appeal is required and no such notice is given before the end of that period,
- (b) when the Court of Appeal refuses leave to appeal against the conviction, if the leave of the Court of Appeal is required and notice of application for leave

is given before the end of that period,

- (c) when the period permitted for giving notice of appeal to the Court of Appeal against the conviction ends, if notice is not given before the end of that period,
- (d) when the decision of the Court of Appeal becomes final, if there is no appeal to the Privy Council against that decision, or
- (e) when the decision of the Privy Council is made, if there is such an appeal.

(3) The decision of the Court of Appeal becomes final –

- (a) when the period permitted for applying to the Privy Council for special leave to appeal to it ends, if there is no application for leave to appeal,
- (b) when the Privy Council refuses leave to appeal to it, or
- (c) at the end of the period of 28 days commencing on the day on which leave to appeal to the Privy Council is granted, if no such appeal is brought before the end of that period.

(4) For the purposes of subsections (2) and (3) –

- (a) any power of a court to extend the period permitted for

giving notice of appeal or of application for leave to appeal or for applying for leave to appeal, and

- (b) any power of a court to grant leave to take a step out of time,

shall be ignored.

Special extradition arrangements.

110. (1) This section applies if Her Majesty's Procureur believes -

- (a) that arrangements have been made between the United Kingdom on behalf of the Bailiwick, and another territory, for the extradition of a person from the Bailiwick to the territory, and
- (b) the territory is not a designated territory.

(2) Her Majesty's Procureur may certify that the conditions in paragraphs (a) and (b) of subsection (1) are satisfied in relation to the extradition of the person.

(3) If Her Majesty's Procureur issues a certificate under subsection (2), this Law shall apply in respect of the person's extradition to the territory as if it were a designated territory.

(4) As applied by subsection (3), this Law shall have effect -

- (a) as if sections 7(4), 9(5), 10(10(b)), 26(8) and 28(8) were

omitted, and

- (b) with such modifications as are specified in the certificate.

(5) A certificate under subsection (2) in relation to a person is conclusive evidence that the conditions in paragraphs (a) and (b) of subsection (1) are satisfied in relation to the person's extradition from the Bailiwick to the territory.

Genocide, crimes against humanity and war crimes.

111. (1) If a valid request for a person's extradition is made in respect of an offence specified in subsection (2), it is not an objection to extradition under this Law that the person could not have been punished for the offence under the law in force at the time when and in the place where he or she is alleged to have committed the act of which the person is accused or of which he or she has been convicted.

(2) The offences to which this section refers are –

- (a) an offence that if committed in the Bailiwick would be punishable as an offence under section 45 of the International Criminal Court (Bailiwick of Guernsey) Law, 2019 (genocide, crimes against humanity and war crimes),
- (b) an offence that if committed in the Bailiwick would be punishable as an offence under section 46 of that Law (conduct ancillary to genocide, etc. committed outside the jurisdiction), and

- (c) any offence that is punishable in the Bailiwick as an offence under section 1 of the Geneva Conventions Act 1957 as it applies to the Bailiwick (relating to grave breaches of scheduled conventions).

Custody.

112. (1) If a court remands a person in custody under this Law, the person shall be committed to the institution to which he or she would have been committed if charged with an offence before that court.

(2) Notwithstanding any enactment or rule of law to the contrary, where a person under the age of 21 years is to be remanded in custody under this Law, and it appears to the Magistrate's Court that, having regard to –

- (a) the nature and seriousness of any offence in respect of which a person's extradition under this Law has been requested, and
- (b) the person's apparent character, maturity and other circumstances,

it is not appropriate to remand the person in custody in a place to which the Magistrate's Court would otherwise be required in law to remand the person, he or she may instead remand the person in custody in any other place that it considers appropriate.

(3) A person in custody following arrest under this Law who escapes from custody may be retaken in the same way as if he or she had been in

custody following arrest or apprehension in respect of an offence committed in the Bailiwick.

(4) An order for a person's extradition under this Law is sufficient authority for a person to whom the order is directed or an officer of police –

- (a) to receive the person,
- (b) to keep the person in custody until extradited under this Law, and
- (c) to convey the person to the designated territory to which the person is to be extradited under this Law.

Extradition for more than one offence.

113. The Committee may by regulations provide for this Law to have effect with specified modifications in relation to a case where a request for extradition is made in respect of more than one offence.

Dealing with person for other offences.

114. (1) This section applies if a person is extradited to the Bailiwick from a territory which is not -

- (a) a designated territory, or
- (b) a territory falling within section 86(1)(b).

(2) Subject to section 115, the person may be dealt with in the Bailiwick for an offence committed before the person's extradition only if -

- (a) the offence is one falling within subsection (3), or
 - (b) the condition in subsection (4) is satisfied.
- (3) The offences are –
 - (a) the offence in respect of which the person is extradited;
 - (b) an offence disclosed by the information provided to the territory in respect of that offence;
 - (c) an offence in respect of which consent to the person being dealt with is given on behalf of the territory.
- (4) The condition is that –
 - (a) the person has returned to the territory from which the person was extradited, or
 - (b) the person has been given an opportunity to leave the Bailiwick.
- (5) A person is dealt with in the Bailiwick for an offence if –
 - (a) the person is tried there for it, or
 - (b) the person is detained with a view to trial there for it.

Detention of person for trial in the Bailiwick for other offences.

115. (1) Section 86 or section 114 does not prevent a person in whose case that section applies from being detained with a view to trial in the Bailiwick for an offence if the conditions in subsection (2) are satisfied.

(2) The conditions are –

- (a) the Bailiwick and the territory from which the person was extradited have each made a declaration under Article 14(3) of the Convention on Extradition done at Paris on 13 December 1957, and the declarations are still in force,
- (b) Her Majesty's Procureur makes a request for the consent referred to in section 86(3)(c) or 114(3)(c) in respect of the offence ("**the consent request**"), and
- (c) Her Majesty's Procureur gives notification, which is explicitly acknowledged on behalf of the territory, of the date on which the detention is to begin ("**the notified date**").

(3) This section applies only to detention during the period beginning with the notified date and ending with whichever of the following occurs first -

- (a) if a notification of opposition to the detention is given on behalf of the territory, the date on which Her Majesty's Procureur receives it,

- (b) the date on which Her Majesty's Procureur receives notification given on behalf of the territory as to whether the consent request is granted or refused,
- (c) the expiry of the period of 90 days beginning with the date on which the consent request is received.

Restriction on bail where undertaking given by Her Majesty's Procureur.

116. (1) This section applies in relation to a person if –

- (a) Her Majesty's Procureur has given an undertaking in connection with the person's extradition to the Bailiwick, and
- (b) the undertaking includes terms that the person be kept in custody until the conclusion of any proceedings against him in the Bailiwick for an offence.

(2) A court may grant bail to the person in the proceedings only if the court considers that there are exceptional circumstances which justify it.

Transfer from Alderney or Sark to Guernsey.

117. (1) Where a person is arrested in Alderney or Sark under a warrant issued under section 7 or under a provisional warrant issued under section 9, 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 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 the Chairman 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.

Parties to international conventions.

118. (1) The Committee may by regulations –

(a) designate an international Convention to which the Bailiwick is a party, and

(b) specify conduct to which the Convention applies.

(2) If Her Majesty's Procureur believes, in respect of a request for a person's extradition, that –

(a) the request is for extradition to a territory that is a party to a Convention designated under subsection (1)(a),

(b) the territory is not a designated territory, and

- (c) the conduct specified in the request is conduct specified under subsection (1)(b),

Her Majesty's Procureur may certify that the conditions in paragraphs (a) to (c) are satisfied in relation to the extradition of the person.

(3) If Her Majesty's Procureur issues a certificate under subsection (2) this Law applies in respect of the person's extradition to the territory as if the territory were a designated territory.

(4) As applied by subsection (3), this Law has effect as if –

- (a) sections 2, 3, 7(4), 9(5), 10(10)(b), 26(8) and 28(8) were omitted, and
- (b) the conduct that constituted an extradition offence for the purposes of Part 2 were the conduct specified under subsection (1)(b).

(5) A certificate under subsection (3) in relation to a person is conclusive evidence that the conditions in paragraphs (a) to (c) of subsection (2) are satisfied in relation to the person's extradition.

Use of live links at certain hearings.

119. (1) This section applies in relation to a hearing in proceedings under this Law, other than an extradition hearing.

(2) If satisfied that the person affected by an extradition claim is likely to be in custody during the hearing, the court may give a live-link evidence

direction in respect of that person under the Live-Link Evidence (Bailiwick of Guernsey) Ordinance, 2008^g at any time before the hearing if it is satisfied that the conditions set out in section 1(2) of that Ordinance are fulfilled.

(3) Such a direction may be given in relation to all subsequent hearings to which this section applies, or to such hearing or hearings to which this section applies as may be specified or described in the direction.

Live links: supplementary.

120. (1) The court may rescind a live-link evidence direction at any time before or during a hearing to which it relates.

(2) The court must not give a live-link evidence direction or rescind such a direction unless the parties to the proceedings have been given the opportunity to make representations.

(3) If a hearing takes place in relation to the giving or rescinding of a live-link evidence direction, the court may require or permit any party to the proceedings who wishes to make representations to do so through a live link.

(4) If in a case where the court has power to give a live link direction but decides not to do so, the reasons for not doing so must be stated in open court.

(5) For the purposes of this section and section 119 –

(a) a person is affected by an extradition claim if –

^g Ordinance No. XI of 2008; as amended by No. X of 2011.

- (i) a request for the person's extradition is made, or
 - (ii) a warrant under section 9 is issued in respect of the person, and
- (b) references to being in custody include references to being in police detention within the meaning of PPACE.

Young persons.

121. In any proceedings before the Magistrate's Court under this Law relating to the extradition of a person who is under the age of 18 years, section 8(1) and (2) of the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008^h shall apply as it applies to proceedings in the Juvenile Court, unless the Magistrate's Court orders otherwise.

National security.

122. (1) This section applies if Her Majesty's Procureur believes that the conditions in subsections (2), (3) and (4) are satisfied in relation to a person.

(2) The first condition is that the person's extradition is sought or will be sought under Part II or Part III in respect of an offence.

(3) The second condition is -

(a) that in engaging in the conduct constituting or alleged

^h Order in Council No. VI of 2009; as amended by Ordinance No. IX of 2016.

to constitute the offence, the person was acting in the exercise of a function conferred or imposed by or under an enactment, or

- (b) that as a result of an authorisation given by Her Majesty's Procureur, the person is not liable under the criminal law of any part of the Bailiwick for the conduct constituting or alleged to constitute the offence.

(4) The third condition is that the person's extradition in respect of the offence would be against the interests of national security.

(5) If this section applies, Her Majesty's Procureur may certify that the conditions in subsections (2), (3) and (4) are satisfied in relation to the person.

(6) If Her Majesty's Procureur issues a certificate under subsection (5), he or she may direct that a request for the person's extradition in respect of the offence is not to be proceeded with.

(7) If Her Majesty's Procureur issues a certificate under section (5), he or she may order the person's discharge instead of or in addition to giving a direction under subsection (6).

(8) If Her Majesty's Procureur gives a direction under subsection (6) in respect of a request for extradition, then –

- (a) if Her Majesty's Procureur has not issued a certificate

under section 6 that the request is made in the approved way, he or she is no longer required to do so,

- (b) if the person is arrested under a warrant issued by the Magistrate's Court under section 7 or under a provisional warrant, there is no requirement for the person to appear or be brought before the Magistrate's Court and the person shall be discharged,
- (c) the Magistrate's Court is no longer required to proceed or continue proceeding under sections 8, 10, 11 and 12, if the person appears or is brought before the Magistrate's Court,
- (d) if the extradition hearing has begun, the Magistrate's Court is no longer required to proceed or to continue proceeding under sections 16 to 33 (relating to the extradition hearing),
- (e) if the person has given to the Magistrate's Court the person's consent to being extradited, the Magistrate's Court is no longer required to send the case to Her Majesty's Procureur for Her Majesty's Procureur's decision whether the person is to be extradited,
- (f) if an appeal has been brought to the Royal Court or the Privy Council, the Royal Court or the Privy Council (as the case may be) is no longer required to hear or to

continue hearing the appeal, and

- (g) if the person's extradition has been ordered, there is no requirement for the person to be extradited.

(10) Any –

- (a) certificate under subsection (5),
- (b) direction under subsection (6), or
- (c) order under subsection (7),

shall be in writing, and shall be signed by Her Majesty's Procureur.

Documents sent by facsimile and email.

123. (1) This section applies if a document to be sent in connection with proceedings under this Law is sent by facsimile transmission or email.

(2) This Law shall have effect as if the document received by facsimile transmission or email were the document used to make the transmission.

(3) The document received by facsimile transmission or email may be received in evidence accordingly.

(4) This section is without prejudice to the provisions of the

Electronic Transactions (Guernsey) Law, 2000ⁱ.

Receivable documents.

124. (1) A duly authenticated document issued in a designated territory may be received in evidence in proceedings under this Law.

(2) A document issued in a designated territory is duly authenticated if (but only if) –

- (a) it purports to be signed by a judge, magistrate or officer of the designated territory,
- (b) it purports to be certified, whether by seal or otherwise, by the Ministry or Department of the territory responsible for justice or for foreign affairs, or
- (c) it purports to be authenticated by the oath or affirmation of a witness.

(3) Nothing in this section prevents a document that is not duly authenticated from being received in evidence in proceedings under this Law.

Written statements and admissions.

125. (1) The provisions specified in subsection (2) apply in relation to proceedings under this Law as they apply in relation to criminal proceedings.

ⁱ Order in Council No. VIII of 2000; as amended by Ordinance No. XXXIII of 2003; No. XIV of 2014; No. IX of 2016; and No. XXIV of 2017

- (2) The provisions to which this section refers are –
 - (a) section 1 of the Administration of Justice (Bailiwick of Guernsey) Law 1991^j (proof by written statement), and
 - (b) section 2 of that Law (admissions of facts).

Burden and standard of proof.

126. (1) This section applies if, in proceedings under this Law, a question arises as to the burden or standard of proof.

(2) The question shall be decided by applying any enactment or rule of law that would apply if the proceedings were criminal proceedings.

(3) An enactment or rule of law that is to be applied under subsection (2) shall be applied as if –

- (a) the person whose extradition is sought (or who has been extradited) were accused of an offence, and
- (b) the designated territory concerned were the prosecution.

(4) Subsections (2) and (3) are subject to any express provision of this Law.

^j Ordres en Conseil Vol. XXXIII, p. 49; as amended by Ordres en Conseil Vol. XXV(1), p. 271; Vol. XXVI, pp. 256, 577 and 639; Order in Council No. I of 2003; No. XIII of 2006; and No. XVIII of 2009.

Subordinate legislation.

127. (1) The Committee may make Regulations relating to any of the following matters –

- (a) specifying, in respect of a designated territory, a time limit for the purpose of section 10(10)(b),
- (b) prescribing the form of any document required for the purposes of this Law (other than a form that is to be or may be prescribed by rules of court),
- (c) providing for any other matters that are to be or may be prescribed under any other provisions of this Law (other than matters that are to be or may be prescribed by rules of court),
- (d) providing for such other matters as are reasonably necessary for or incidental to the purpose of carrying this Law into effect.

(2) Regulations under this Law shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(3) Where the Committee proposes to make regulations under this section applying in Alderney or Sark, it shall consult -

- (a) the Policy and Finance Committee of the States of Alderney, or
- (b) the Policy and Finance Committee of the Chief Pleas of Sark,

as the case may be; but a failure to comply with this section shall not invalidate any regulations made under this section.

(4) Regulations applying in Alderney or Sark made under this section by the Committee cease to have effect -

- (a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove their application to Alderney, and
- (b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove their application to Sark.

(5) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of regulations in accordance with subsection (4), the regulations cease to have effect in Alderney or (as the case may be) Sark, but without prejudice to -

- (a) anything done under the regulations in Alderney or (as the case may be) Sark, or

(b) the making of new regulations having effect in Alderney or (as the case may be) Sark.

(6) In this section, "approval date", in relation to regulations, means the date of their enactment by the Committee.

Amendments to other enactments.

128. The enactments specified in Schedule 3 shall be consequentially amended in the manner specified in that Schedule.

Interpretation.

129. (1) In this Law, unless the context otherwise requires –

"appropriate consent" has the same meaning as it has in section 91 of PPACE,

"asylum claim" means a claim made by a person to the Lieutenant-Governor that to remove that person from or require that person to leave the Bailiwick would breach the Bailiwick's obligations under the Refugee Convention,

"Chief Officer of Customs and Excise" has the same meaning as it has in the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^k.

^k Ordres en Conseil Vol. XXIII, p. 573; amended by Ordres en Conseil Vol. XXIV, p. 87; Vol. XXXI, p. 278; Vol. XXXIII, p. 217; Order in Council No. X of 2004; No. II of 2010; No. XIV of 2007; No. XV of 2012; Ordinance No. XXXIII of 2003; No. XXIX of 2004; No. XLVIII of 2007; No. XXXV of 2007; No. VII of 2008; No. XLIII of 2013; No. XL of 2014; No. IX of 2016; No. XXXI of 2017; G.S.I. No. 56 of 2008; G.S.I.

"Chief Officer of Police" means the Chief Officer of the Island Police Force,

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

"Commonwealth country" means a member of the Commonwealth of Nations,

"designated territory", "designated territory of the first category" and "designated territory of the second category": see section 5,

"extradition" includes re-extradition,

"extradition arrest warrant" means –

- (a) a warrant issued under section 7, or
- (b) a provisional warrant,

"extradition claim" means a request for a person's extradition,

"extradition hearing" means the hearing at which the Magistrate's Court is to deal with a request for extradition to a designated territory,

No. 76 of 2009; G.S.I. No. 97 of 2010; G.S.I. No. 42 of 2011; G.S.I. No. 54 of 2012; G.S.I. No. 53 of 2013; G.S.I. No. 61 of 2014; G.S.I. No. 70 of 2015; G.S.I. No. 46 of 2016; G.S.I. No. 81 of 2017; and G.S.I. No. 56 of 2018.

"fingerprints" has the same meaning as it has in section 91 of PPACE,

"the Human Rights Convention" means the European Convention on Human Rights,

"the Human Rights Law" means the Human Rights (Bailiwick of Guernsey) Law, 2000^l,

"intimate search" has the same meaning as it has in section 91 of PPACE,

"Island Police Force" means the salaried police force of the island of Guernsey,

"items subject to legal privilege" has the same meaning as it has in section 24 of PPACE,

"Judge" means a person appointed to the office of Judge of the Magistrate's Court under section 2 of the Magistrate's Court (Guernsey) Law, 2008^m,

"non-intimate sample" has the same meaning as it has in section 91 of PPACE,

^l Order in Council No. XIV of 2000; amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; No. XXVI of 2018; and G.S.I. No. 27 of 2006.

^m Order in Council No. XVIII of 2009; amended by Ordinance No. XXII of 2009; and No. IX of 2016.

"**PPACE**" means the Police Powers and Criminal Evidence (Bailiwick of Guernsey Law, 2003ⁿ,

"**premises**" has the same meaning as it has in section 91 of PPACE,

"**Procureur's certificate**": section 24,

"**provisional warrant**" means a warrant issued under section 8,

"**re-extradition hearing**" means an extradition hearing under Part III,

"**the Refugee Convention**" means the United Nations Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, and the Protocol relating to the Status of Refugees, which entered into force on 4 October 1967,

"**the Royal Court**" means the Royal Court sitting as an Ordinary Court,

"**special material**" has the same meaning as it has in section 25 of PPACE, and

"**territory**" includes a state and any other country.

(2) In this Law, references to a valid request for a person's extradition are references to a request that is valid because it satisfies the

ⁿ Order in Council No. XXIII of 2003; as amended by Order in Council No. XVI of 2009; No. XV of 2011; Ordinance No. XXXIII of 2003; No. XXIX of 2011; No. XXXIX of 2015; and No. IX of 2016; No. XXVI of 2018.

requirements in section 6(3).

(3) In this Law, "**taking a photograph**" includes using a process by means of which a visual image may be produced, and "**photographed**" and related expressions shall be construed accordingly.

Citation and commencement.

130. (1) This Law may be cited as the Extradition (Bailiwick of Guernsey) Law, 2019.

(2) This Law shall come into force on such day as the Committee may by regulations appoint, and different days may be appointed for different provisions of this Law.

SCHEDULE 1

Section 5

DESIGNATED TERRITORIES

PART 1

DESIGNATED TERRITORIES OF THE FIRST CATEGORY

Albania,

Andorra,

Armenia,

Aruba,

Australia,

Azerbaijan,

Belgium,

Bulgaria,

Bonaire,

Bosnia and Herzegovina,

Canada,

Croatia,

Curaçao,

Cyprus,

Czech Republic,

Denmark,

Estonia,

Finland,

Faroe Islands,

Finland,

France,

Georgia,

Germany,

Gibraltar,

Greenland,

Greece,

Hong Kong Special Administrative Region (for the purposes of sections 7 and 9 only),

Hungary,

Iceland,

Ireland,

Israel,

Italy,

Latvia,

Liechtenstein,

Lithuania,

Luxembourg,

Macedonia, FYR,

Malta,

Moldova,

Monaco,

Montenegro,

New Zealand,

Norway,

Poland,

Portugal,

The Republic of Korea,

Romania,

Russian Federation,

Saba,

San Marino,

Serbia .

Sint Eustatius,

Sint Maarten,

Slovakia,

Slovenia,

South Africa,

Spain,

Sweden,

Switzerland,

The Netherlands,

Turkey,

Ukraine,

The United States of America.

PART 2

DESIGNATED TERRITORIES OF THE SECOND CATEGORY

Algeria,

Antigua and Barbuda,

Argentina,

The Bahamas,

Bangladesh,

Barbados,

Belize,

Bolivia,

Botswana,

Brazil,

British Antarctic Territory,

British Indian Ocean Territory,

Brunei,

Cayman Islands,

Chile,

Colombia,

Cook Islands,

Cuba,

Dominica,

Ecuador,

El Salvador,

Falkland Islands,

Fiji,

The Gambia,

Ghana,

Grenada,

Guatemala,

Guyana,

Hong Kong Special Administrative Region (except for the purposes of sections 7 and 9),

Haiti,

India,

Iraq,

Jamaica,

Kenya,

Kiribati,

Kosovo,

Lesotho,

Liberia,

Libya,

Malawi,

Malaysia,

Maldives,

Mauritius,

Mexico,

Montserrat,

Nauru,

Nicaragua,

Nigeria,

Panama,

Papua New Guinea,

Paraguay,

Peru,

Philippines,

Pitcairn, Henderson, Ducie and Oeno Islands,

Saint Christopher and Nevis,

Saint Helena, Ascension and Tristan da Cunha,

Saint Lucia,

Saint Vincent and the Grenadines,

Seychelles,

Sierra Leone,

Singapore,

Solomon Islands,

South Georgia and the South Sandwich Islands,

The Sovereign Base Areas of Akrotiri and Dhekalia (that is to say the areas mentioned in section 2(1) of the Cyprus Act 1960),

Sri Lanka,

Swaziland,

Tanzania,

Thailand,

Tonga,

Trinidad and Tobago,

Turks and Caicos Islands

Tuvalu,

Uganda,

Uruguay,

The United Arab Emirates,

Vanuatu,

Virgin Islands,

Western Samoa,

Zambia,

Zimbabwe.

SCHEDULE 2

Section 83(2).

RE-EXTRADITION PROCEEDINGS

1. In section 16, omit subsections (2), (3) and (5).
2. In section 16, for subsection (4) substitute –

"(4) The Magistrate's Court must decide whether the offence specified in the request is an extradition offence."- 3. In section 16(6), for "any of the questions" substitute "the question".
- 4. In section 16(7), for "those questions" substitute "that question".
- 5. In section 17(1), omit paragraph (c).
- 6. Omit section 20.
- 7. In section 29(3), for the words from "shall send the case" to "extradited" substitute "may order the person to be extradited to the designated territory".
- 8. In section 29, after subsection (3) insert -

"(4) If the Magistrate's Court makes an order under subsection (3) it must remand the person in custody or on bail to wait for his or her extradition to the territory.

(5) If the Magistrate's Court remands the person in custody it may later grant bail."

9. In section 45, for subsection (1) substitute –

"(1) A person may appeal to the Royal Court against an order that the person be extradited."

10. In section 45(2), for the words from "before the case" to "extradited" substitute "the order is made under section 73".

11. In section 45, omit subsections (4), (5) and (6).

12. In section 45(7), for the words from "Her Majesty's Procureur" to "extradition" substitute "the order is made".

13. In section 46, omit subsections (1)(b) and (6).

14. In section 48, omit subsections (1)(b), (7) and 8(b).

15. In section 61, after subsection (1) insert –

"(1A) However, this section does not apply if the order is made under section 73.",

and in subsection (2)(a) for "the Her Majesty's Procureur" substitute "the Magistrate's Court".

16. In section 64, after subsection (1) insert –

"(1A) However, this section does not apply if the order for the person's extradition is made under section 73."

17. In section 67(1)(a), and (2) to (6), for "the Her Majesty's Procureur" substitute "the Magistrate's Court".

18. In section 72(1), for the words from "arrested" to "requested" substitute "brought before the Magistrate's Court under section 82(1) may consent to his or her extradition to the territory in which the overseas sentence was imposed".

19. In section 72(3), after "in writing," insert "must be given before the Magistrate's Court,".

20. In section 73, after subsection (1) insert -

"(1A) The Magistrate's Court must remand the person in custody or on bail.

(1B) If the Magistrate's Court remands the person in custody it may later grant bail."

21. In section 73(4), for the words from "send the case" to "extradited" substitute "within the period of 10 days starting with the day on which consent is given order the person's extradition to the designated territory".

22. In section 73, after subsection (4) insert -

"(5) If subsection (4) is not complied with and the person applies to the Magistrate's Court to be discharged the Magistrate's Court must order the person's discharge.".

23. After section 73 insert –

"Extradition to designated territory following consent.

73A. (1) This section applies if the Magistrate's Court makes an order under section 73(4) for a person's extradition to a designated territory.

(2) The person must be extradited to the designated territory before the end of the required period, which is 28 days starting with the day on which the order is made.

(3) If subsection (2) is not complied with and the person applies to the Magistrate's Court to be discharged the Magistrate's Court must order the person's discharge, unless reasonable cause is shown for the delay.

Extradition claim following consent.

73B. (1) This section applies if -

- (a) a person consents under section 72 to his or her extradition to a designated territory, and

- (b) before the judge orders his or her extradition under section 73(4), the Magistrate's Court is informed that the conditions in subsection (2) are met.

(2) The conditions are that -

- (a) Her Majesty's Procureur has received another valid request for the person's extradition to a designated territory,
- (b) the other request has not been disposed of.

(3) The judge must not make an order under section 73(4) until he or she is informed what order has been made under section 75(2).

(4) If the order under section 75(2) is for further proceedings on the request under consideration to be deferred until the other request has been disposed of, the judge must remand the person in custody or on bail.

(5) If the Magistrate's Court remands the person in custody the Magistrate's Court may later grant bail.

(6) If -

- (a) the order under section 75(2) is for further proceedings on the request under consideration

to be deferred until the other request has been disposed of, and

- (b) an order is made under section 106 for proceedings on the request under consideration to be resumed,

the period specified in section 73(4) must be taken to be 10 days starting with the day on which the order under section 106 is made.

(7) If the order under section 75(2) is for further proceedings on the other request to be deferred until the request under consideration has been disposed of, the period specified in section 73(4) must be taken to be 10 days starting with the day on which the Magistrate's Court is informed of the order.

Extradition following deferral for competing claim.

73C. (1) This section applies if -

- (a) an order is made under section 73(4) for a person to be extradited to a designated territory in pursuance of a request for his or her extradition,
- (b) before the person is extradited to the territory an order is made under section 75(2) for the person's extradition in pursuance of the request to be deferred,

(c) the Magistrate's Court makes an order under section 107(1) for the person's extradition in pursuance of the request to cease to be deferred.

(2) The required period for the purposes of section 73A(2) is 28 days starting with the day on which the order under section 107(2) is made."

SCHEDULE 3

Section 128

AMENDMENTS TO OTHER ENACTMENTS

Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003

1. The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 is amended as follows.

2. In section 67(15) –

(a) in paragraph (a), delete the word "or",

(b) in paragraph (b), for "." substitute ", or",

(c) insert the following paragraph –

"(c) applies to a person who is arrested under an extradition arrest warrant."

3. At the end of section 69 insert –

"(19) Nothing in this section applies to a person who is arrested under an extradition arrest warrant."

4. In section 91(3), in the appropriate place insert –

""**extradition arrest warrant**" has the same meaning as it has in section 129 of the Extradition (Bailiwick of Guernsey) Law, 2019,".

5. In section 92, in the appropriate place insert –

"

extradition arrest warrant	Section 91
----------------------------	------------

".

Bail (Bailiwick of Guernsey) Law, 2003

1. The Bail (Bailiwick of Guernsey) Law, 2003^o is amended as follows.
2. In section 1(2) (meaning of "bail in criminal proceedings"), in paragraph (b) for "." substitute ", or", and after paragraph (b) insert -

"(c) bail grantable in connection with extradition proceedings in respect of an offence."

3. In section 2 (the right to bail), in subsection (3) omit the words ", or in respect of proceedings against a fugitive offender for the offence".

4. In section 2 after subsection (3) insert –

"(3A) This section also applies to a person ("P") whose extradition is sought in respect of an offence, when –

^o Order in Council No. XVII of 2003; amended by No. VI of 2009; Ordinance No. XXXIII of 2003; No. IX of 2016.

- (a) P appears or is brought before a court in the course of or in connection with extradition proceedings in respect of the offence, or
- (b) P applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.

(3B) However, subsection (3A) above does not apply if the person is alleged to be unlawfully at large after conviction of the offence."

5. In section 9 (reconsideration of decisions granting bail), at the end of subsection (2) insert ", and this section applies to proceedings where the Magistrate's Court has granted bail in connection with extradition proceedings".

6. In section 11 (liability to arrest for absconding or breaking conditions of bail) after subsection (1) insert –

"(1A) Subsection (1B) applies if –

- (a) a person has been released on bail in connection with extradition proceedings,
- (b) the person is under a duty to surrender into the custody of an officer of police, and
- (c) the person fails to surrender to custody at the time appointed for the person to do so.

(1B) The Magistrates' Court may issue a warrant for the person's arrest."

7. In section 11 after subsection (4) insert –

"(4A) A person who has been released on bail in connection with extradition proceedings and is under a duty to surrender into the custody of an officer of police may be arrested without warrant by an officer of police on any of the grounds set out in paragraphs (a) to (c) of subsection (3).

(4B) A person arrested in pursuance of subsection (4A) above shall be brought as soon as practicable and in any event within 24 hours after his or her arrest before the Magistrate's Court."

8. In section 11(5) after "subsection (4)" insert "or (4B)".

9. In section 15 (prosecution right of appeal), after subsection (1) insert –

"(1A) Where the Magistrates' Court grants bail to a person in connection with extradition proceedings, the prosecution may appeal to the Royal Court against the granting of bail."

10. In section 15(2), for "Such an appeal" substitute "An appeal under subsection (1) or (1A) ".

11. In section 19(6) omit the definition of "**proceedings against a fugitive offender**" and in the appropriate places insert -

""**extradition proceedings**" means proceedings under the Extradition (Bailiwick of Guernsey) Law, 2019," and

""**prosecutor**", in relation to extradition proceedings, means the person acting on behalf of the territory to which extradition is sought,".

12. In the Schedule, at the end insert –

"**21.** In this Schedule, "**criminal proceedings**" includes extradition proceedings."

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

ARRANGEMENT OF SECTIONS

PART I THE INTERNATIONAL CRIMINAL COURT

1. The ICC and the ICC Statute.

PART II ARREST AND DELIVERY OF PERSONS

Proceedings on request

2. Request for arrest and surrender.
3. Request for provisional arrest.
4. Transfer from Alderney or Sark to Guernsey.
5. Dealing with a person arrested under a provisional warrant.
6. Proceedings for delivery order.
7. Consent to surrender.

Proceedings where Court refuses delivery order

8. Procedure where Court refuses order.
9. Appeal against refusal of delivery order.

Proceedings where Court makes delivery order

10. Procedure where Court makes order.
11. Right to review of delivery order.
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Warrants, custody, bail and related matters

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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 24th September, 2013^a, 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 17th 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

^a 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^b 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

^b 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^c as it has effect in the Bailiwick under the State Immunity (Guernsey) Order, 1980^d,
- (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^e, the Consular Relations Act 1968^f or the International Organisations Act 1968^g 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,

^c An Act of Parliament (1978 c. 33).

^d U.K. S.I. No. 871 of 1980.

^e An Act of Parliament (1964 c. 81).

^f An Act of Parliament (1968 c. 18).

^g 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^h, 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

^h 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, 2010ⁱ,
- (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,

ⁱ 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^j 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).

^j An Act of Parliament (1971 c.77)

(7) In subsection (6) "the Immigration Acts" means the Immigration Act 1971, the Immigration Act 1988^k and the Asylum and Immigration Appeals Act 1993^l, 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

^k An Act of Parliament (1988 c. 14)

^l 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^m as it has effect for the time being in the Bailiwick,
- (b) sections 29 and 30 of the Prison (Guernsey) Ordinance, 2013ⁿ,
- (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^o,
- (e) the Parole Review Committee Ordinance, 1991^p.

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

^m An Act of Parliament (1997 c. 43)

ⁿ Ordinance No. XXIX of 2013; amended by No. XXVII of 2015; No. XXXVI of 2016.

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

^p 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 2001⁹, 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.

⁹ 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^r,

^r 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^s,
 - (c) Part VIII of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013^t.
- (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.

^s 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,

^t 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^u,

^u 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^v,

^v 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^w ("**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).

^w 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^x, and

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

^x 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^y 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.

^y 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^Z,
- (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

^z 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^{aa} or the Companies (Alderney) Law, 1994^{bb}, 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.

^{aa} 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.

^{bb} 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

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.

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) Conscription 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.