

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

INTERNATIONAL CRIMINAL COURT
– EXTENSION OF RELEVANT PROVISIONS OF UK ACT OF PARLIAMENT

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'International Criminal Court – Extension of relevant provisions of UK Act of Parliament', dated 28th July, 2021, they are of the opinion:-

1. to agree that an Order in Council be made to extend to the Bailiwick, to such extent, and with such modifications, as appear to Her Majesty in Council to be appropriate following consultation with the Committee *for* Home Affairs, Sections 23(5), 44, 45 and 83 of and Schedule 10 to the International Criminal Court Act, 2001, and
2. to signify their agreement to the substance of the proposed Order in Council (a copy of the latest draft of which is attached as an Appendix to the Policy Letter) for the purposes of Article 72A of the Reform (Guernsey) Law, 1948, as amended.

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.

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

28th July, 2021

Dear Sir

1 Executive Summary

- 1.1 In 2013, the States of Deliberation approved the principles of giving effect to requests for assistance from the International Criminal Court and extending the Rome Statute to the Bailiwick; having considered a Policy Letter from the then Home Department. The States then approved the International Criminal Court (Bailiwick of Guernsey) Law ('the ICC Law') in 2019. The ICC Law was then sent to the Ministry of Justice for onward transmission to the Privy Council, using the usual procedures. A draft Order in Council ('ICC Order') intended to extend certain provisions of the UK's International Criminal Court Act 2001 ('the Act') to the Bailiwick was also sent to the Ministry of Justice at that time. It was intended that, together, the ICC Law and the ICC Order would form a package of legislative measures necessary to implement the States' decisions.
- 1.2 Soon after those documents were sent to the Ministry of Justice, an additional section of the Reform Guernsey Law, 1948, came into force ('Article 72A'). Consequently, the legislative process was paused. One of the effects of Article 72A is that, when an Order in Council is to be made extending a provision of a UK Act of Parliament to Guernsey, the States of Deliberation must agree to the substance of that Order before the Order is registered in the Royal Court; unless the Policy & Resources Committee ('the Committee') is of the view that such consideration by the States is unnecessary.

- 1.3 The Committee is referring the matter to the States to fulfil the requirements of Article 72A of the Reform Law and the States is recommended to approve that the relevant parts of the Act be extended to the Bailiwick and to signify its agreement to the corresponding Order in Council.

2 Background

The International Criminal Court and the Rome Statute

- 2.1 “The International Criminal Court is a permanent supranational court based in The Hague, which tries individuals for genocide, crimes against humanity and war crimes. ... At a United Nations conference in Rome in 1998, a statute creating an international court was approved (‘the Rome Statute’). ... The [International Criminal Court] was established with the coming into force of the Rome Statute on 1st July, 2002. It exists to create a powerful deterrent to potential perpetrators of atrocities, to end accusations of selective justice, and to ensure a swift response to alleged crimes by removing the need to establish a new tribunal every time a court hearing is required.”¹
- 2.2 “The [International Criminal Court] is intended to be complementary to national courts. Under the terms of the Rome Statute, if states have jurisdiction in respect of particular crimes under their domestic laws, they will retain such jurisdiction unless they are unable or unwilling genuinely to investigate and prosecute those crimes.”
- 2.3 The UK enacted the [International Criminal Court Act 2001](#) to implement the provisions of the Rome Statute into its domestic law.

Previous States of Deliberation decisions regarding the International Criminal Court

- 2.4 In 2013², the States of Deliberation approved the principles of giving effect to requests for assistance from the International Criminal Court and extending the Rome Statute to the Bailiwick. The States then approved the ICC Law in 2019³. The ICC Law is intended to make provisions for the Bailiwick corresponding to the Act, so that the Rome Statute can be implemented in the Bailiwick.
- 2.5 The ICC Law was drafted following Resolutions made by the States of Deliberation in 2013⁴. Those Resolutions were:

¹ Paragraphs 2.1-2.2 taken from, and Paragraph 2.3 adapted from, advice from HM Procureur published in section 2 of the Home Department’s Policy Letter ‘Criminal Justice Legislation International Criminal Court’ as in [Billet d’État XV of 2013 \(Volume 2\)](#)

² [Billet d’État XV of 2013 \(Volume 2\)](#) and [Resolutions of 24th September, 2013](#)

³ [Billet d’État XVIII of 2019 \(Volume 1\)](#) and [Resolutions of 26th September, 2019](#)

⁴ [Billet d’État XV of 2013 \(Volume 2\)](#) and [Resolutions of 24th September, 2013](#)

- “1. To approve the drafting of legislation to implement the Rome Statute, as described in paragraph 2 of that Report [dated 15th April 2013, of the Home Department], in the Bailiwick.
 2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.”
- 2.6 Paragraph 2 of the Report, on which Resolution 1 was based, (a copy of advice from HM Procureur) set out various requirements needed to give effect to the Rome Statute. In that paragraph, HM Procureur recommended that Bailiwick legislation similar to the Act be enacted to implement the Rome Statute within the Bailiwick. That paragraph does not explicitly refer to the necessity to extend sections of the UK Act to the Bailiwick by way of a UK statutory instrument (the draft ICC Order). However, Resolution 2 directs the preparation of such legislation as may be necessary to give effect to the States’ decision to implement the Rome Statute in the Bailiwick.
- 2.7 The Law Officers of the Crown have advised that it is necessary to extend certain parts of the Act to the Bailiwick as part of the package of legislative measures to implement the Rome Statute in the Bailiwick. The International Criminal Court Act 2001 (Guernsey) Order 2021 (‘the ICC Order’) was drafted accordingly (a copy of the draft Order is attached in the Appendix to this Policy Letter). The ICC Order makes provision so that the relevant UK Secretary of State can exercise powers (with the Bailiwick’s consent) to enable certain actions required for the functioning of the Rome Statute. These powers relate to the overriding of any state or diplomatic immunity attaching to any person in the context of an International Criminal Court investigation and to the movement of prisoners between the Bailiwick and the United Kingdom. The ICC Order would extend certain provisions of the UK Act (specifically Sections 23(5), 44, 45 and 83 and Schedule 10) to the Bailiwick and has been proposed at the request of the Bailiwick. The same provisions of the Act have already been extended to the Isle of Man and to Jersey.
- 2.8 The provisions of the Act to be extended to the Bailiwick (with any necessary modifications) are summarised in Section 3 below.

The legislative process

- 2.9 In accordance with usual procedures, following approval by the States, the ICC Law was sent to the Ministry of Justice for onward transmission to the Privy Council. A draft Order in Council (the ICC Order) intended to extend certain provisions of the Act to the Bailiwick was also sent to the Ministry of Justice at that time.

- 2.10 However, soon after those documents had been sent to the Ministry of Justice, [the Reform \(Guernsey\) \(Amendment\) Law, 2019](#) was registered and immediately came into force in Guernsey; it introduced a new provision amending the Reform Law (Article 72A, as in Section 4 below). One of the effects of Article 72A is that, when an Order in Council is to be made extending a provision of a UK Act to Guernsey, the States of Deliberation must agree to the substance of that Order before it is registered in the Royal Court, unless the Policy & Resources Committee is of the view that such consideration by the States is unnecessary.
- 2.11 After Article 72A of the Reform Law came into force in Guernsey (on 4th November, 2019), the Ministry of Justice was requested to pause the process towards Royal Sanction of the ICC Law and approval of the Order in Council to allow consideration about how to fulfil the requirements of the Reform Law.
- 2.12 Following due consideration, the Committee decided to refer the making of the International Criminal Court Act 2001 (Guernsey) Order, 2021 to the States of Deliberation, to fulfil the requirements of Article 72A of the Reform Law.
- 3 Sections of the UK's International Criminal Court Act, 2001 to be extended to the Bailiwick by an Order in Council**
- 3.1 Section 23(5) of the 2001 Act facilitates the implementation of any resolution of the United Nations Security Council which has the effect of overriding any state or diplomatic immunity attaching to any person in the context of an International Criminal Court investigation. This is achieved by modifying a power in the United Nations Act 1946 which is itself exercisable by the Secretary of State by Order in Council. It is therefore necessary to extend the statutory modification to the Bailiwick by Order in Council.
- 3.2 Sections 44 and 45 enable the transfer of International Criminal Court prisoners between different parts of the UK which is effected by order of the relevant UK Minister. As applied to Guernsey, the provisions will enable the Secretary of State to order such transfers between the Bailiwick and the United Kingdom (hence the necessity for an Order in Council) but no such order will be made without the agreement of the Committee *for* Home Affairs.
- 3.3 Section 83 and Schedule 10 are extended in so far as they repeal certain provisions of the specified United Kingdom Acts in their application to the Bailiwick. This is to ensure consistency with the effects of the 2001 Act and could not be achieved by Bailiwick domestic legislation.
- 3.4 The legislation makes provision for any privileges and immunities to be extended to the International Criminal Court, as required.

4 Article 72A of the Reform (Guernsey) Law, 1948

4.1 Article 72A (1) and (2) of the Reform (Guernsey) Law, 1948 provide:

"Duty to refer certain matters to the States of Deliberation."

72A. (1) Where it is proposed that -

- (a) a provision of a draft Act of the Parliament of the United Kingdom should apply directly to Guernsey, or
- (b) an Order in Council should be made -
 - (i) extending to Guernsey a provision of an Act of the Parliament of the United Kingdom,
 - (ii) extending to Guernsey a Measure, pursuant to the Channel Islands (Church Legislation) Measures 1931 and 1957, or
 - (iii) that is otherwise expressed to have effect in, or to be applicable to or otherwise binding upon, Guernsey,

the Policy and Resources Committee shall, unless that Committee considers it unnecessary, submit the proposal to the States of Deliberation, in order that the States may signify their views on it.

(2) Where, upon transmission of -

- (a) an Act of the Parliament of the United Kingdom containing a provision described in paragraph (1)(a), or
 - (b) an Order in Council described in paragraph (1)(b),
- to the Royal Court for registration, it appears to the Royal Court that the States of Deliberation have not signified their agreement to the substance of the provision or Order in Council -
- (i) the Royal Court shall refer the provision or Order in Council, as the case may be, to the Policy and Resources Committee, and
 - (ii) the Policy and Resources Committee shall, unless that Committee considers it unnecessary, submit it to the States in accordance with paragraph (1)."

4.2 Article 72A(1)(b)(i) requires the Policy & Resources Committee to submit to the States of Deliberation any proposal for an Order in Council to be made to extend to Guernsey provisions of Acts of Parliament of the UK, in order that the States can signify their views on it. The Policy & Resources Committee is submitting this Policy Letter to fulfil that obligation.

4.3 The Committee recommends that the States signify their agreement to the proposed ICC Order, so that when the Order in Council is made and transmitted to the Royal Court for registration in due course, the Royal Court can register that ICC Order without delay and without further reference to the Policy & Resources Committee, in accordance with Article 72A(2)(b).

4.4 Following this, the Bailiwick will seek the extension of the Rome Statute Treaty

once the legislation is in place to ensure compliance.

5 Consultation with Alderney and Sark

- 5.1 The ICC Law is a Bailiwick-wide law. Consequently, as explained in the 2013 Policy Letter, the States of Alderney and Chief Pleas of Sark were consulted and were supportive of the proposals. Similarly, Alderney and Sark's governments have been advised about the intention to extend the relevant provisions of the Act to the Bailiwick to complete the relevant package of legislative measures (as in Paragraph 2.7) and to bring the matter to the attention of the States of Deliberation to fulfil the obligations of Article 72A.
- 5.2 Alderney's authorities had no comment on the proposal to refer the matter to Guernsey's parliament. There is currently no equivalent legislation in Alderney to Article 72A of the Reform (Guernsey) Law and, therefore, no need for similar consideration there.
- 5.3 Sark has recently enacted the Reform (Sark) (Amendment) Law, 2020, and introduced S63A, a provision which is similar in effect to Article 72A, when UK legislation is extended. On 18th May 2021, in anticipation of S63A coming into force, Sark's Policy & Finance Committee decided that it was not necessary to refer the ICC legislation to Chief Pleas and agreed for the ICC legislation to be extended to Sark.

6 Compliance with Rule 4

- 6.1 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.
- 6.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 6.3 In regard to Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, no additional resources will be required to fulfil the Propositions of this Policy Letter.
- 6.4 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.
- 6.5 In accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees, the Propositions relate to the duties of the Policy & Resources Committee because its mandate includes exercising powers

and performing duties conferred on it by extant legislation (in this case, those in Article 72A of the Reform (Guernsey) Law).

- 6.6 The Committee *for* Home Affairs' ('CfHA') mandate includes responsibilities to advise the States and develop and implement policies on matters including crime prevention, law enforcement and justice policy. The Home Department (CfHA's predecessor) brought the original Policy Letter entitled 'Criminal Justice Legislation International Criminal Court' to the States of Deliberation in 2013. CfHA brought the ICC Law to the States for approval in 2019. CfHA was advised that the Policy & Resources Committee was drafting a Policy Letter to fulfil the requirements of Article 72A and was consulted on this Policy Letter.
- 6.7 Except for the engagement with Alderney and Sark outlined in Section 5, it has not been necessary for the Policy & Resources Committee to consult with other parties within the Bailiwick before this Policy Letter is published, as the Reform (Guernsey) Law only applies to Guernsey and the requirements of Article 72A are to bring the proposed extension of the relevant provisions of the International Criminal Court Act, 2001 (and the substance of the proposed Order in Council) to the States for consideration.

Yours faithfully

Policy & Resources Committee

P T R Ferbrache
President

H J Soulsby
Vice-President

M A J Helyar
J P Le Tocq
D J Mahoney

2021 No. *

INTERNATIONAL CRIMINAL COURT

International Criminal Court Act 2001

(Guernsey) Order 2021

Made

Coming into force in accordance with Article 1

At the Court at Buckingham Palace, the * day of *

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 79(3) of the International Criminal Court Act 2001^a, is pleased, by and with the advice of Her Privy Council, to make the following Order:

1. This Order may be cited as the International Criminal Court Act 2001 (Guernsey) Order 2021 and shall come into force on the same day as the International Criminal Court (Guernsey) Law 2021 comes into force.

2. The following provisions of the International Criminal Court Act 2001 shall extend to the Bailiwick of Guernsey –

(a) section 23(5) (extension of powers under United Nations Act

^a 2001 c.17

1946^b);

- (b) sections 44 and 45 (transfer of prisoners), subject to the modifications set out in the Schedule to this Order, and
- (c) section 83 and Schedule 10 (repeals), so far as they relate to section 1(4) of the Geneva Conventions Act 1957, the Genocide Act 1969 and section 1(5) of the Geneva Conventions (Amendment) Act 1995.

SCHEDULE

MODIFICATIONS OF CERTAIN PROVISIONS OF THE 2001 ACT IN THEIR EXTENSION TO THE BAILIWICK OF GUERNSEY

1. In section 44 (Transfer to another part of the United Kingdom: transfer of ICC sentence) –
 - (a) in the heading omit the words "another part of";
 - (b) in subsections (1) and (3), for the words "the relevant Minister" substitute "Secretary of State";
 - (c) in subsection (1), for the words "to another part of the United Kingdom" substitute "from the Bailiwick of Guernsey to any part of the United Kingdom";

^b 1946 c.45.

(d) for subsection (2) substitute –

"(2) No such order shall be made without the agreement of the States Committee for Home Affairs; and no such order shall be made for the transfer of the prisoner to Scotland without the agreement of the Scottish Ministers."; and

(e) omit subsections (4), (5) and (6).

2. In section 45 (Transfer to another part of the United Kingdom: transfer for temporary purposes) –

(a) in the heading omit "another part of";

(b) in subsections (1), (2) and (4), for the words "relevant Minister" substitute "Secretary of State";

(c) in subsection (1)(a) and (b), for the word "another" substitute "any";

(d) for subsection (3) substitute –

"(3) No such order shall be made without the agreement of the States Committee for Home Affairs; and no such order shall be made for the transfer of the prisoner to Scotland without the agreement of the Scottish Ministers."; and

(e) omit subsections (5) and (6).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends to the Bailiwick of Guernsey specified provisions of the International Criminal Court Act 2001 (c.17) (the 2001 Act) subject to the modifications set out in the Schedule.

In particular, section 23(5) of the 2001 Act enables United Nations Security Council (UNSC) resolutions which might, depending on their wording, override any immunities attaching to representatives of all States, including non-parties, to be implemented in the Bailiwick, where the UNSC refers a situation to the International Criminal Court (ICC) for investigation and prosecution. Section 44 of the 2001 Act enables the transfer of prisoners between the United Kingdom and the Bailiwick to serve the remainder of an ICC sentence. Section 45 of the 2001 Act provides for the temporary transfer of a prisoner in custody between United Kingdom jurisdictions and the Bailiwick for the purpose, for example, of attending criminal proceedings against the prisoner.