



Jersey

# **INTERNATIONAL CRIMINAL COURT (JERSEY) LAW 2014**

## **Official Consolidated Version**

This is an official version of consolidated legislation compiled and issued under the authority of the Legislation (Jersey) Law 2021.

Showing the law from 1 October 2021 to 20 September 2023



Jersey

# INTERNATIONAL CRIMINAL COURT (JERSEY) LAW 2014

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Jersey

## INTERNATIONAL CRIMINAL COURT (JERSEY) LAW 2014

A **LAW** to give effect to the Statute of the International Criminal Court, to provide for offences under the law of Jersey corresponding to offences within the jurisdiction of that Court, and for connected purposes.

Commencement [[see endnotes](#)]

### PART 1

#### THE INTERNATIONAL CRIMINAL COURT: PRELIMINARY

#### 1 Interpretation and supplementary provisions

- (1) In this Law, except where the context otherwise requires –
- “1990 Law” means the [Bankruptcy \(Désastre\) \(Jersey\) Law 1990](#);
  - “1991 Law” means the [Companies \(Jersey\) Law 1991](#);
  - “2003 Law” means the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#);
  - “Article 2 warrant” means a warrant endorsed or issued as described in Article 2;
  - “conduct” includes an omission;
  - “crime against humanity” has the meaning in Article 44(1);
  - “delivery order” means an order under Article 5(3);
  - “fingerprint” has the same meaning as in Article 1 of the 2003 Law;
  - “genocide” has the meaning in Article 44(1);
  - “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 the Statute of the International Criminal Court done at Rome on 17th July 1998;
  - “ICC crime” means a crime (other than the crime of aggression) over which the ICC has jurisdiction in accordance with the ICC Statute;
  - “Jersey resident” means a person who is resident in Jersey;
  - “Jersey ship” has the same meaning as in the [Shipping \(Jersey\) Law 2002](#);
  - “non-intimate sample” has the same meaning as in Article 1 of the 2003 Law;
  - “person subject to UK service jurisdiction” has the meaning in Article 43;

“prisoner” –

- (a) for the purposes of Article 28 has the meaning in Article 28(5);
- (b) for the purposes of Part 4 means a person subject to a sentence of imprisonment imposed by the ICC; and
- (c) for the purposes of paragraph 3 of Schedule 2 has the meaning in paragraph 3(5) of that Schedule;

“provisional warrant” means a warrant issued under Article 3;

“remand” means to remand in custody or on bail;

“Rules of Procedure and Evidence” mean the Rules of Procedure and Evidence referred to in Article 51 of the ICC Statute;

“Secretary of State” means one of Her Majesty’s Principal Secretaries of State;

“state of enforcement”, in relation to any particular person, shall mean the state of enforcement for the purposes of applying the ICC Statute to that person;

“United Kingdom national” has the meaning in Article 43;

“war crime” has the meaning in Article 44(1).

- (2) In this Law for the purpose of construing a reference to any person receiving from the ICC –
  - (a) a request of any kind; or
  - (b) summons or other document,it shall be irrelevant whether the request was made directly by the ICC to that person.
- (3) Schedule 1 contains supplementary provisions relating to the ICC and shall have effect.

## PART 2

### ARREST AND DELIVERY OF PERSONS

#### *Proceedings on request*

## **2 Request for arrest and surrender**

- (1) This Article applies where the Attorney General receives a request from the ICC for the arrest and surrender of a person who is alleged –
  - (a) to have committed an ICC crime; or
  - (b) to have been convicted by the ICC.
- (2) The Attorney General shall transmit the request and the documents accompanying it to the Magistrate.
- (3) If the request is accompanied by a warrant of arrest and the Magistrate is satisfied that the warrant appears to have been issued by the ICC, the Magistrate shall endorse the warrant for execution in Jersey.
- (4) 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 is the person referred to in the judgment of conviction; and
  - (c) where the person 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 Magistrate shall issue a warrant for the arrest of the person.

### **3 Request for provisional arrest**

- (1) This Article applies where the Attorney General receives from the ICC a request for the provisional arrest of a person who is alleged –
  - (a) to have committed an ICC crime; or
  - (b) to have been convicted by the ICC.
- (2) The Attorney General shall make an application to the Magistrate for a warrant for the arrest of the 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
  - (b) that the person is in, or on his or her way to, Jersey,and thereupon the Magistrate shall issue a warrant for the arrest of the person.

### **4 Dealing with person arrested under a provisional warrant**

- (1) This Article applies where a person has been arrested under a provisional warrant.
- (2) Such a person shall be brought before the Magistrate as soon as is practicable.
- (3) If there is produced to the Magistrate an Article 2 warrant in respect of the person, the Magistrate shall proceed as if the person had been arrested under that warrant.
- (4) If no Article 2 warrant is produced, the Magistrate shall remand the person pending the production of such a warrant or until the period (including, if applicable, the total period) has elapsed for which the person may be so remanded under the Rules of Procedure and Evidence referred to in paragraph (5), whichever is the earlier.
- (5) The States shall make provision by Regulations under paragraph 2 of Schedule 1 (power to make provision to give effect to Rules of Procedure and Evidence) 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 the Rules of Procedure and Evidence.
- (6) If at any time when the person is so remanded there is produced to the Magistrate an Article 2 warrant in respect of the person –
  - (a) the Magistrate 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.

- (7) If no such warrant is produced to the Magistrate before the end of the period of the remand (including any extension of that period), the Magistrate shall discharge the person.
- (8) The fact that the person has been discharged under this Article does not prevent the person's subsequent arrest under an Article 2 warrant.

## **5 Proceedings for delivery order**

- (1) This Article applies to a person who is arrested under an Article 2 warrant, including a person who is treated as having been so arrested under Article 4(3) or (6).
- (2) The person must be brought before the Magistrate as soon as is practicable.
- (3) If the Magistrate is satisfied –
  - (a) that the warrant –
    - (i) is a warrant of the ICC and has been duly endorsed under Article 2(3), or
    - (ii) has been issued under Article 2(4); and
  - (b) that the person is the person named or described in the warrant,the Magistrate 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 Minister for Home Affairs.
- (4) In the case of a person alleged to have committed an ICC crime, the Magistrate 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.
- (5) In deciding whether to make a delivery order the Magistrate 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.
- (6) Whether or not the Magistrate makes a delivery order, the Magistrate may of the Magistrate's own motion, and shall on the application of the person, determine –
  - (a) whether the person was lawfully arrested in pursuance of the warrant; and
  - (b) whether the person's rights have been respected.
- (7) In making a determination under paragraph (6) the Magistrate shall apply the principles which would be applied by the Royal Court on an application for judicial review.
- (8) If the Magistrate 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 Magistrate shall make a declaration to that effect, but may not grant any other relief.

- (9) In proceedings under this Article the Magistrate has the like powers as if they were proceedings in respect of an offence alleged to have been committed by that person in respect of which the Magistrate had jurisdiction under Article 15 of the [Criminal Procedure \(Jersey\) Law 2018](#), including power to adjourn the case and to remand the person whose surrender is sought and such proceedings shall be conducted as nearly as may be in the like manner.<sup>1</sup>
- (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 Magistrate.
- (11) The Magistrate shall notify the Attorney General of any declaration under paragraph (8).

## **6 Consent to surrender**

- (1) A person arrested under this Part may 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) Such consent is referred to in this Article as “consent to surrender”.
- (3) 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.
- (4) 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.
- (5) Where consent to surrender has been given –
  - (a) the Magistrate shall forthwith make a delivery order; and
  - (b) the person shall be taken to have waived the right under Article 10 to review of a delivery order.
- (6) Where consent to surrender has been given, notice of that fact shall be given in writing to the Attorney General and –
  - (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 the States of Jersey Police Force.

### *Proceedings where delivery order is refused*

## **7 Procedure where order is refused**

- (1) If the Magistrate refuses to make a delivery order the Magistrate shall –
  - (a) make an order remanding the person; and
  - (b) notify the Attorney General of that decision and of the grounds for it.
- (2) If the Magistrate is informed without delay that an appeal is to be brought under Article 8, the order remanding the person shall continue to have effect.
- (3) If the Magistrate is not so informed, the Magistrate shall discharge the person.

**8 Appeal against refusal of delivery order**

- (1) If the Magistrate refuses to make a delivery order, the Attorney General 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 Magistrate to make a delivery order in accordance with the decision of the Royal Court.
- (4) If the Royal Court dismisses the appeal, the Attorney General may, with the permission 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 paragraph (3).
- (6) Where a delivery order is made by the Royal Court or Her Majesty in Council, the provisions of Articles 9(1)(a) and (c) and 9(2) apply to that court as they apply to the Magistrate.
- (7) An order for the remand of a person which continues in force under Article 7(2) shall cease to have effect if the Royal Court dismisses the appeal and the Attorney General does not without delay –
  - (a) apply for permission to appeal to Her Majesty in Council; or
  - (b) inform the Royal Court that he intends to apply for such permission.
- (8) Subject to that, any such order shall have effect so long as the case is pending.
- (9) For this purpose, unless proceedings are discontinued, a case is pending until there is no step that the Attorney General can take (disregarding any power of a court to allow a step to be taken out of time).

*Proceedings where court makes delivery order***9 Procedure where delivery order is made**

- (1) When the Magistrate makes a delivery order, the Magistrate shall –
  - (a) commit the person to custody or on bail to await the directions of the Minister for Home Affairs as to the execution of the order;
  - (b) inform the person of the person's rights under Article 10 (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 the Attorney General of the decision to make the delivery order.
- (2) If the Magistrate commits the person to custody under sub-paragraph (1)(a), the Magistrate may subsequently remand the person on bail.

**10 Right to review of delivery order**

- (1) This Article applies where a delivery order is made by the Magistrate, unless the person –
  - (a) under Article 11 waives the rights that the person has under this Article; or

- (b) is taken to have done so under Article 6(5)(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 Minister for Home Affairs for the execution of a delivery order shall not have effect –
  - (a) until after the end of the period mentioned in paragraph (2); or
  - (b) if, before the end of that period an application under paragraph (2) is made, while proceedings on the application are still pending.
- (4) Proceedings on an application under paragraph (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 paragraph (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 sub-paragraph (a) and (b) of Article 5(3); and
  - (b) the provisions of Article 5(4) to (11) apply in relation to the Royal Court as they apply to the Magistrate (but with the substitution in Article 5(6) for "makes a delivery order" of "sets aside the delivery order").

## **11 Waiver of right to review**

- (1) A person in respect of whom a delivery order has been made may waive the 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 made 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 Article 10(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 in writing of that fact must be given to the Attorney General and –
  - (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 the States of Jersey Police Force.

*Warrants, custody, bail and related matters***12 Effect of warrant of arrest**

- (1) An Article 2 warrant or a provisional warrant may be executed by any person to whom it is directed or by a police officer.
- (2) 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 Magistrate.

**13 Effect of delivery order**

- (1) A delivery order is sufficient authority for any person acting in accordance with the directions of the Minister for Home Affairs to receive the person in respect of whom the delivery order has been made, 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 Minister for Home Affairs.
- (2) Where a delivery order is in force the person is deemed to be in legal custody at any time when –
  - (a) in Jersey; or
  - (b) on board a Jersey ship,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 authorized 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 member of the States of Jersey Police Force.
- (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, the person is required to be or to be taken.

**14 Bail and custody: general**

- (1) Nothing in this Part shall be taken as authorizing the Magistrate to grant bail to a person who is serving a sentence of custody to which the person has been sentenced by a court in Jersey, or who is in custody awaiting trial or sentence by a court in Jersey.
- (2) Articles 9, 11(2), 12(1) to (6), (10) and (11), 13 and 14, and Articles 17 to 20 of the [Criminal Procedure \(Bail\) \(Jersey\) Law 2017](#) (the "Bail Law") shall, subject to the modifications set out in sub-paragraphs (a) and (b), apply for the purposes of this Article as if a person to whom this Part applies were a defendant within the meaning of the Bail Law –
  - (a) in Articles 9, 11(2), 12 to 14 and Articles 17 and 18 of the Bail Law, any reference to "court" shall be construed as a reference to the "Magistrate";
  - (b) For Article 12(1) of the Bail Law there is substituted the following paragraph –

"(1) Subject to Article 15(c) of the International Criminal Court (Jersey) Law 2014, before a defendant is granted bail the Magistrate may, as a

- condition of bail, require the defendant to do either or both of the following –
      - (a) provide a security for that defendant’s surrender to custody which shall be –
        - (i) of such an amount as the Magistrate may order, and
        - (ii) deposited with the Viscount before the defendant is released from the custody of the Magistrate;
      - (b) propose a person who agrees to stand as surety to secure the defendant’s surrender to custody.”.<sup>2</sup>
- (3) A person granted bail under this Law is under a duty to surrender to the custody of the Magistrate, and must not absent himself or herself from the Magistrate’s Court without the Magistrate’s permission.<sup>3</sup>
- (4) If the Magistrate denies the person bail on the first occasion he or she appears before the Magistrate, the person may, on the next occasion he or she appears before the Magistrate, support an application for bail with any argument as to fact or law that the person wishes to put forward (whether or not he or she has advanced that argument on the first occasion).<sup>4</sup>
- (5) On any subsequent occasion that the person applies for bail, the Magistrate need not hear arguments as to fact or law which he or she has heard previously.<sup>5</sup>
- (6) Where the Magistrate –
  - (a) grants or denies a person bail;
  - (b) appoints a time or place or a different time or place for a person to surrender to custody; or
  - (c) imposes, or varies any of the conditions of bail,
 the Magistrate shall make a record of the decision in accordance with Article 10(1) of the Bail Law and, shall cause the person to be given a copy of the record of the decision and reasons for denying bail or imposing or varying conditions of that bail, as soon as practicable after the record is made.<sup>6</sup>

## **15 Bail and custody: consultation with the ICC, etc.**

Where an application for bail is made in proceedings under this Part –

- (a) the Magistrate shall notify the Attorney General of the application;
- (b) the Attorney General shall consult the ICC; and
- (c) the Magistrate 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 he 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 the person’s bail.

**16 Discharge of person not delivered up**

- (1) If the person in respect of whom a delivery order is made is not delivered up under a delivery 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 Article the Royal Court shall order the person's discharge unless reasonable cause is shown for the delay.

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

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

*Request for transit and unscheduled landing***18 Request for transit**

- (1) Where the Attorney General receives a request from the ICC for transit of a person being surrendered by a state other than the United Kingdom –
  - (a) the Attorney General shall send a copy of the request to the Minister for Home Affairs; and
  - (b) the Minister for Home Affairs shall notify the Attorney General whether the Minister accedes to the request.
- (2) Where the Minister for Home Affairs 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 Article 2(3);
  - (c) the person shall be treated on arrival in Jersey as if the person had been arrested under that warrant;
  - (d) Article 5(3) applies with the substitution for sub-paragraph (a) of the following sub-paragraph –

“(a) that the Minister for Home Affairs has acceded to the request for transit; and”;
  - (e) Article 10(2) applies with the substitution for “15 days” of “2 days”.
- (3) A person in transit under this Article may not be granted bail.

**19 Unscheduled landing**

- (1) If a person being surrendered by a state makes an unscheduled landing in Jersey, the person may be arrested by a police officer and shall be brought before the Magistrate as soon as is practicable.
- (2) The Magistrate shall remand the person in custody pending –
  - (a) receipt by the Attorney General of a request from the ICC for the person's transit;



- (b) the decision of the Minister for Home Affairs whether to accede to the request; and
  - (c) the notification of that decision to the Attorney General.
- (3) If no such request is received by the Attorney General before the end of the period of 96 hours beginning with the time of the person's unscheduled landing, or the Minister for Home Affairs informs the Attorney General that the Minister has decided not to accede to such a request –
  - (a) the Attorney General shall notify the Magistrate of that fact; and
  - (b) the Magistrate shall thereupon discharge the person.
- (4) If such a request is transmitted to the Attorney General before the end of that period –
  - (a) the Attorney General shall notify the Magistrate of the request;
  - (b) the Magistrate shall thereupon terminate the period of remand; and
  - (c) Article 18 applies with the substitution in sub-paragraph (2)(c) for “on arrival in Jersey” of “on notification to the Magistrate of the request for transit”.

### *Supplementary provisions*

## **20 Provisions as to state or diplomatic immunity**

- (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 paragraph (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 paragraph (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 Article “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.33) of the United Kingdom, as it has effect in Jersey under the State Immunity (Jersey) Order 1985;
  - (b) any enactment or other legislative provision 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 (c.81), the Consular Relations Act 1968 (c.18) or the International Organisations Act 1968 (c.48), each of the United Kingdom.

## **21 Delivery up of persons subject to criminal proceedings, etc**

Schedule 2 makes provision for cases where the Attorney General 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 Jersey, or who has been dealt with in such proceedings;
- (b) against whom extradition proceedings are pending or in progress in Jersey, 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 Jersey for a delivery order under the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Jersey) Order 1997<sup>7</sup> (Order in Council registered by the Royal Court on 12th February 1997, or against whom a delivery order has been made in such proceedings.

## **22 Documents having effect as warrants, etc**

- (1) For the purposes of this Part –
  - (a) the copy of a warrant issued by the ICC which is transmitted to the Attorney General; and
  - (b) a copy of that copy, certified by or on behalf of the Attorney General as a true copy,shall each be treated as if it were the original warrant.
- (2) Where facsimile transmission 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 receivable 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) Paragraph (3) does not affect the validity of anything done in reliance on the original warrant.

## PART 3

### OTHER FORMS OF ASSISTANCE

#### *Introduction*

#### **23 Provision of assistance**

- (1) This Part applies where –
  - (a) an investigation has been initiated by the ICC; and
  - (b) the investigation and any proceedings arising out of it have not been concluded.
- (2) Where facsimile transmission 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 receivable 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.

#### *Forms of assistance*

#### **24 Questioning**

- (1) This Article applies where the Attorney General 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 of the ICC Statute; and
  - (b) consents to be interviewed.
- (3) The provisions of article 55 of the ICC Statute are set out in Schedule 3.
- (4) Consent for the purposes of sub-paragraph (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 is reasonably practicable.

#### **25 Taking or production of evidence**

- (1) This Article applies where the Attorney General receives a request from the ICC for assistance in the taking or production of evidence.

- (2) For this purpose “evidence” includes documents and other articles.
- (3) The Attorney General shall direct the Magistrate to receive the evidence to which the request relates.
- (4) For this purpose the Magistrate –
  - (a) has the same powers with respect to securing the attendance of witnesses and the production of documents or other articles as he has for the purpose of other proceedings before the Magistrate’s Court; and
  - (b) may take evidence on oath.
- (5) A person shall not be compelled to give evidence or produce anything in proceedings under this Article that that person could not be compelled to give or produce in criminal proceedings.
- (6) If, in order to comply with the request, it is necessary for the evidence received by the Magistrate to be verified in any manner, the direction under paragraph (3) shall specify the nature of the verification required.
- (7) No order for costs shall be made in proceedings under this Article.

## **26 Taking or production of evidence: further provisions**

- (1) The following provisions apply in relation to proceedings before the Magistrate under Article 25 and the evidence received in the proceedings.
- (2) The Magistrate may, if the Magistrate thinks it 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 Judicial Greffier shall ensure that an *acte* of the proceedings is made 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 witness’s testimony.
- (4) The *acte* shall not be open to inspection except as authorized by the Attorney General or with the leave of the Magistrate.
- (5) A copy of the *acte* shall be sent to the Attorney General for transmission to the Secretary of State and the ICC.

## **27 Service of process**

- (1) This Article applies where the Attorney General receives from the ICC a summons or other document together with a request for it to be served on a person in Jersey.
- (2) The Attorney General may direct the Viscount to serve the document personally on that person.
- (3) If the document is so served, the Viscount shall forthwith inform the Attorney General when and how it was served.

- (4) If it does not prove possible to serve the document, the Viscount shall forthwith inform the Attorney General of that fact and of the reason.

## **28 Transfer of prisoner to give evidence or assist in investigation**

- (1) This Article applies where the Attorney General 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) The Attorney General shall transmit the request to the Minister for Home Affairs, who shall issue a warrant (a “transfer warrant”) requiring the prisoner to be delivered up, in accordance with arrangements made by the Minister for Home Affairs with the ICC, into the custody of the ICC.
- (3) A transfer warrant shall not be issued unless the prisoner consents to the transfer, but consent may not be withdrawn after the issue of the transfer warrant.
- (4) Articles 13 and 21 and Schedule 2 apply in relation to a transfer warrant under this Article as they apply in relation to a delivery order under Part 2.
- (5) In this Article “prisoner” means –
  - (a) a person serving a sentence in a prison within the meaning of Article 1(1) of the [Prison \(Jersey\) Law 1957](#); or
  - (b) a person detained in custody otherwise than in pursuance of a sentence, including in particular –
    - (i) a person in custody awaiting trial or sentence,
    - (ii) a person committed to custody for contempt or for default in paying a fine,
    - (iii) a person in custody in connection with proceedings to which Part 2 or 3 of Schedule 2 applies,
    - (iv) a person detained under any provision of the Immigration Act 1971 (c.77) of the United Kingdom as it has effect in Jersey.
- (6) For the purposes of the Immigration Acts a person detained under any provision of the Immigration Act 1971 (c.77) of the United Kingdom, as it has effect in Jersey, is not to be regarded as having left Jersey at any time when a transfer warrant is in force in respect of that person (including any time when that person is in the custody of the ICC).
- (7) In paragraph (6) “the Immigration Acts” means the Immigration Act 1971 (c.77), the Immigration Act 1988 (c.14) and the Asylum and Immigration Appeals Act 1993 (c.23), each of the United Kingdom, as they have effect in Jersey.

## **29 Entry, search and seizure**

- (1) Where the Attorney General receives from the ICC a request for assistance which appears to the Attorney General to require the exercise of any of the powers conferred by Part 3 of 2003 Law, the Attorney General shall direct a police officer to apply for a warrant or order under the said Part 3.
- (2) The said Part 3 shall apply in relation to an ICC crime as it applies to a serious offence (within the meaning of Article 3 of that Law).

**30 Taking of fingerprints or non-intimate sample**

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.

**31 Orders for exhumation**

The Viscount may issue an order in writing for the exhumation of the body of a person (“the deceased”) where it appears to the Viscount 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 of the deceased or of some other person who died in circumstances connected with the death of the deceased.

**32 Provision of records and documents**

- (1) This Article applies where the Attorney General receives a request from the ICC for the provision of records and documents relating to –
  - (a) the evidence given in any proceedings in Jersey 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) The Attorney General shall take such steps as appear to the Attorney General to be appropriate to obtain the records and documents requested.

**33 Investigation of proceeds of ICC crime**

Where the Attorney General receives a request from the ICC for assistance –

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

the Attorney General may apply for an order or warrant under Schedule 5.

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

Where the Attorney General 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, the Attorney General may apply on behalf of the ICC for a freezing order under Schedule 6.

*National security***35 Production or disclosure prejudicial to national security**

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

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

#### *Supplementary provisions*

### **36 Verification of material**

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, the Attorney General may give directions as to the nature of the verification required.

### **37 Transmission of material to the ICC**

- (1) Any evidence or other material obtained under this Part, together with any requisite verification, must be sent to the Attorney General 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 4**

### **ENFORCEMENT OF SENTENCES AND ORDERS**

#### *Sentences of imprisonment*

### **38 Detention in Jersey in pursuance of ICC sentence**

- (1) This Article 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 Jersey.
- (2) If the Minister for Home Affairs agrees that the prisoner should be detained in Jersey, the Minister for Home Affairs shall issue a warrant authorizing –
  - (a) the bringing of the prisoner to Jersey;
  - (b) the detention of the prisoner in Jersey 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 a warrant under paragraph (2) may be varied by the Minister for Home Affairs, and shall be so varied to give effect to any variation of the ICC's sentence.
- (4) A prisoner subject to a warrant authorizing the prisoner's detention in Jersey 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) None of the following apply in relation to a person detained in Jersey in pursuance of a sentence of the ICC –
  - (a) Articles 16, 17, 18, and 30(2) of the [Prison \(Jersey\) Law 1957](#);
  - (b) the [Repatriation of Prisoners \(Jersey\) Law 2012](#);
  - (c) any provision of Rules under Article 29 of the [Prison \(Jersey\) Law 1957](#) permitting temporary release subject to conditions;
  - (d) the [Criminal Procedure \(Jersey\) Rules 2021](#);
  - (e) Schedule 1 to the Crime (Sentences) Act 1997 (c.43) of the United Kingdom, as it has effect for the time being in Jersey.<sup>8</sup>

### **39 Temporary return or transfer of custody to another state**

- (1) This Article applies where the Minister for Home Affairs 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
  - (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 Minister for Home Affairs shall –
  - (a) issue a warrant authorizing the prisoner's temporary return or transfer in accordance with the request;
  - (b) make the necessary arrangements with the ICC or the other state, as the case may be; 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 warrant authorizing the prisoner's detention in Jersey shall continue to have effect so as to apply to the prisoner again on the prisoner's return.

### **40 Transfer from Jersey to the United Kingdom**

Where an order is made by the Secretary of State or the Scottish Ministers under section 44 or 45 of the International Criminal Court Act 2001 (c.17) of the United Kingdom as it has effect for the time being in Jersey, authorizing, with the consent of the Minister for Home Affairs, the taking of the prisoner from Jersey to any part of the United Kingdom, the Minister shall –

- (a) issue a warrant authorizing 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 Minister appropriate to give effect to the order.



**41 Custody of prisoner in transit, etc**

- (1) This Article applies in relation to times when a prisoner is subject to a warrant under any provision of this Part, but is not in legal custody under the [Prison \(Jersey\) Law 1957](#).
- (2) The prisoner shall be deemed to be in the legal custody of the Minister for Home Affairs at any time when, being –
  - (a) in Jersey; or
  - (b) on board a Jersey ship,the prisoner is being taken to or from any place or is being kept in custody.
- (3) The Minister for Home Affairs may from time to time designate a person as a person who is for the time being authorized to take the prisoner to or from any place or to keep the prisoner in custody.
- (4) A person so authorized has all the powers, authority, protection and privileges of a member of the States of Jersey Police Force.
- (5) If the prisoner escapes or is unlawfully at large, the prisoner may be arrested without warrant by a police officer and taken to any place to which the prisoner may be taken under the warrant referred to in paragraph (1).

*Other orders***42 Power to make provision for enforcement of other orders**

- (1) The States may make provision by Regulations for the enforcement in Jersey 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) The Regulations may authorize the Minister for Home Affairs –
  - (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 Minister to be necessary.
- (3) The Regulations 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 Regulations 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 Regulations may for that purpose apply any statutory provision relating to the enforcement in Jersey of orders of a court of a country or territory outside Jersey.
- (8) The Royal Court shall not exercise its powers of enforcement under the Regulations 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 the Court; and
  - (b) that the exercise of the powers will not prejudice the rights of bona fide third parties.
- (9) The Regulations 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 5

### OFFENCES UNDER JERSEY LAW

#### *Introduction*

#### **43 Interpretation of Part 5**

- (1) In this Part, “United Kingdom national” and “person subject to UK service jurisdiction” have the same meaning as in section 67 the International Criminal Court Act 2001 (c.17) of the United Kingdom.
- (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.

#### **44 Meaning of “genocide”, “crime against humanity” and “war crime”**

- (1) In this Part –
  - “genocide” means an act of genocide as defined in article 6 of the ICC Statute;
  - “crime against humanity” means a crime against humanity as defined in article 7 of the ICC Statute; and
  - “war crime” means a war crime as defined in article 8.2 of the ICC Statute.
- (2) In interpreting and applying the provisions of those articles of the ICC Statute the court shall take into account any relevant Elements of Crimes adopted in accordance with article 9 of the ICC Statute and set out in regulations pursuant to section 50(3) of the International Criminal Court Act 2001 (c.17) of the United Kingdom.
- (3) The articles of the ICC Statute referred to in paragraph (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 Jersey.

- (4) The Chief Minister may by Order –
  - (a) certify that such a reservation or declaration has been made and extends to Jersey and the terms in which it was made;
  - (b) if any such reservation or declaration is withdrawn or has ceased to extend to Jersey (in whole or part), certify that fact and revoke or amend any Order containing the terms of that reservation or declaration.
- (5) In interpreting and applying the provisions of the articles of the ICC Statute referred to in paragraph (1) the 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 of the ICC Statute referred to in this Article are set out in Schedule 7, and no account shall be taken for the purposes of this Part of any provision of those articles of the ICC Statute omitted from the text set out in that Schedule.

#### **45 Genocide, crimes against humanity and war crimes**

- (1) It is an offence against the law of Jersey for a person to commit genocide, a crime against humanity or a war crime.
- (2) This Article applies to acts committed –
  - (a) in Jersey; or
  - (b) outside Jersey by a Jersey resident, a United Kingdom national or a person subject to UK service jurisdiction.

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

- (1) It is an offence against the law of Jersey for a person to engage in conduct ancillary to an act to which this Article applies.
- (2) This Article applies to an act which, if committed in Jersey, would constitute –
  - (a) an offence under Article 45; or
  - (b) an offence under this Article,but which, being committed (or intended to be committed) outside Jersey, does not constitute such an offence.
- (3) The reference in paragraph (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 Jersey.
- (4) This Article applies where the conduct in question consists of or includes an act committed –
  - (a) in Jersey; or
  - (b) outside Jersey by a Jersey resident, a United Kingdom national or a person subject to UK service jurisdiction.

#### **47 Trial and punishment of main offences**

- (1) This Article applies to –

- (a) offences under Article 45 (genocide, crimes against humanity and war crimes);
  - (b) offences under Article 46 (conduct ancillary to genocide, etc. committed outside jurisdiction); and
  - (c) offences ancillary to an offence within sub-paragraph (a) or (b).
- (2) Proceedings for an offence to which this Article applies shall not be begun except by, or with the consent of, the Attorney General.
- (3) 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.
- (4) In paragraph (3) “murder” means the killing of a person in such circumstances as would, if committed in Jersey, constitute murder.
- (5) In any other case a person convicted of an offence is liable to imprisonment for a term of 30 years.

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

- (1) A person intentionally committing any of the acts mentioned in article 70.1(a) of the ICC Statute is guilty of an offence and liable to imprisonment for a term of 7 years and a fine.
- (2) A person intentionally committing any of the acts mentioned in article 70.1(b) to (f) of the ICC Statute is guilty of an offence and liable to imprisonment for a term of 5 years and a fine.
- (3) In interpreting and applying the provisions of article 70.1 of the ICC Statute the court shall take into account –
  - (a) any relevant judgment or decision of the ICC; and
  - (b) any other relevant international jurisprudence.
- (4) This Article applies to acts committed –
  - (a) in Jersey; or
  - (b) outside Jersey by a Jersey resident, a United Kingdom national or a person subject to UK service jurisdiction.
- (5) Proceedings for an offence under this Article, or for an offence ancillary to such an offence, shall not be begun except by, or with the consent of, the Attorney General.
- (6) Article 70.1 of the ICC Statute is set out in Schedule 8.

#### **49 Protection of victims and witnesses**

- (1) This Article applies to –
  - (a) the [Criminal Justice \(Evidence and Procedure\) \(Jersey\) Law 1998](#); and
  - (b) the [Criminal Justice \(Anonymity in Sexual Offence Cases\) \(Jersey\) Law 2002](#).
- (2) The provisions of the Laws to which this Article applies have effect –

- (a) as if any reference in those provisions to a specific substantive offence included an offence under Article 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 Article 45 involving conduct constituting the substantive offence in question, and
    - (ii) an offence under Article 46 involving conduct constituting that ancillary offence in relation to an act to which that Article applies involving conduct constituting the substantive offence in question.
- (3) In paragraph (2) –
- (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 Jersey.

#### *Supplementary provisions*

### **50 Responsibility of commanders and other superiors**

- (1) This Article applies in relation to –
  - (a) offences under this Part; and
  - (b) offences ancillary to such offences.
- (2) A military commander, or a person effectively acting as a military commander, is responsible for offences committed by forces under his or her effective command and control, or (as the case may be) his or her effective authority and control, as a result of his or her failure to exercise control properly over such forces where –
  - (a) he or she 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) he or she 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 paragraph (2), a superior is responsible for offences committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates where –
  - (a) he or she either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offences;
  - (b) the offences concerned activities that were within his or her effective responsibility and control; and
  - (c) he or she 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 Article 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 Article (which corresponds to article 28 of the ICC Statute) the court shall take into account –
  - (a) any relevant judgment or decision of the ICC; and
  - (b) any other relevant international jurisprudence.
- (6) Nothing in this Article shall be read as restricting or excluding –
  - (a) any liability of the commander or superior apart from this Article; or
  - (b) the liability of persons other than the commander or superior.

## **51 Saving for general principle of liability**

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).

## **52 Mental element etc.**

- (1) In determining whether an offence under this Part has been committed the court shall apply the principles of the law of Jersey.
- (2) 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 of the ICC Statute,shall be construed in accordance with the following provisions of this Article.
- (3) Unless otherwise provided by –
  - (a) the articles of the ICC Statute mentioned in the definition in Article 44(1) of the crimes specified in paragraph (2)(a) to (c), or any relevant Elements of Crimes referred to in Article 44(2);
  - (b) Article 48(1) or (2) or article 70.1 of the ICC Statute; or
  - (c) Article 50,a person is regarded as committing such an act or crime only if the material elements are committed with intent and knowledge.
- (4) 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.

- (5) In interpreting and applying paragraphs (3) and (4) (which correspond to article 30 of the ICC Statute) the court shall take into account any relevant judgment or decision of the ICC.

### **53 Proceedings against persons becoming resident within the jurisdiction**

- (1) This Article applies in relation to a person who commits acts outside Jersey at a time when that person is not a Jersey resident, United Kingdom national or a person subject to UK service jurisdiction and who subsequently becomes resident in Jersey.
- (2) Proceedings may be brought against such a person in Jersey for a substantive offence under this Part if –
- (a) he or she is resident in Jersey 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 Jersey.
- (3) Proceedings may be brought against such a person in Jersey for an offence ancillary to a substantive offence under this Part (or what would be such a substantive offence if committed in Jersey) if –
- (a) he or she is resident in Jersey 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 Jersey.
- (4) In this Article a “substantive offence” means an offence other than an ancillary offence.
- (5) Nothing in this Article shall be read as restricting the operation of any other provision of this Part.

## **PART 6**

### **GENERAL PROVISIONS**

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

- (1) Article 20 applies in relation to proceedings under the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Jersey) Order 1997<sup>9</sup> (Order in Council, registered by the Royal Court on 12th February 1997, as it applies in relation to proceedings under Part 2, with the following adaptations –
- (a) in paragraph (1) omit the words “by reason of a connection with a state party to the ICC Statute”;
  - (b) omit paragraphs (2), (3) and (5);
  - (c) in paragraph (4) –
    - (i) for the reference to the ICC substitute a reference to the relevant International Tribunal, and
    - (ii) omit the words “or (2)”.
- (2) Articles 38 to 41 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.

**55 Application to the Crown**

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.

**56 References to United Kingdom Ministers**

The States may by Regulations 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.

**57 Subordinate legislation**

- (1) The States may, by Regulations, amend, modify or disapply any enactment to give effect to any provision of this Law.
- (2) Regulations and Orders made under this Law may include supplementary, incidental, saving and transitional provisions.
- (3) The powers of the Superior Number of the Royal Court to make rules under the [Royal Court \(Jersey\) Law 1948](#) shall include power to make rules for the purposes of this Law.

**58 Short title**

This Law may be cited as the International Criminal Court (Jersey) Law 2014.



**SCHEDULE 1<sup>10</sup>**

(Article 1(3))

**SUPPLEMENTARY PROVISIONS RELATING TO THE ICC****1 Legal capacity, privileges and immunities**

- (1) The States may by Regulations confer on the ICC the legal capacities of a body corporate.
- (2) The States may by Regulations provide that –
  - (a) the ICC;
  - (b) the judges, the Prosecutor, the Deputy Prosecutors and the Registrar;
  - (c) the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry; and
  - (d) counsel, experts, witnesses and other persons involved in proceedings of the ICC,

shall have such privileges and immunities as the States decide 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 Jersey.

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

The States may by Regulations make such provision as appears to the States to be necessary or expedient for giving effect to –

- (a) any Rules of Procedure and Evidence having effect under article 51 of the ICC Statute; 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 Jersey.

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

- (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 his 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) A document is duly authenticated for this purpose if it purports to be certified by any person in that person's capacity as a judge or officer of the ICC.

**4 Evidence about ICC proceedings and orders**

- (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 Court, or that proceedings before the Court have been instituted and have not been concluded;
  - (b) that an order of the Court is in force and is not subject to appeal;
  - (c) that property recoverable under a forfeiture order made by the Court 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 2, 3 or 4 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) A document is duly authenticated for this purpose if it purports to be certified by any person in that person's 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 admissibility of any evidence, whether contained in a document or otherwise, which is admissible apart from this paragraph.

**5 Certified copies of documents**

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**

(Article 21)

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

#### **PART 1**

#### **CRIMINAL PROCEEDINGS**

##### **1 Meaning of “criminal proceedings”**

In this Part “criminal proceedings” means proceedings before a court in Jersey –

- (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 sub-paragraph (a) or (b).

##### **2 Criminal proceedings**

- (1) This paragraph applies where –
  - (a) the Attorney General 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.
- (2) The Attorney General shall inform the court of the request, and 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 should be made.
- (3) Where a delivery order is made and the criminal proceedings are still pending or in progress, the Attorney General –
  - (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 the Attorney General gives a direction under sub-paragraph (3), the court before which the 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).
- (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.

##### **3 Effect on custodial sentences**

- (1) Where in pursuance of Part 2 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 that 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 Jersey, but there shall be counted towards the completion of that term any time during which he or she is in the custody of the ICC or of any state.

- (2) Where in pursuance of Part 2 of this Law a court orders the discharge of a person who is a prisoner, the discharge is without prejudice to the liability of that person to complete any term of custody to which that person has been sentenced by a court in Jersey.
- (3) A prisoner to an order referred to in paragraph (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 2 of this Law a delivery order is made in respect of a person who is a prisoner, the order may include provision authorizing the return of the prisoner into the custody of the Minister for Home Affairs –
  - (a) in accordance with arrangements made by the Minister 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 Minister 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 Jersey to which he or she is subject.
- (5) In this paragraph “prisoner” means a person serving a sentence in a prison within the meaning of Article 1(1) of the [Prison \(Jersey\) Law 1957](#).

#### **4 Power to suspend or revoke other orders**

- (1) This paragraph applies where a 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 Jersey.
- (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 sub-paragraph (1).

### **PART 2**

#### **EXTRADITION PROCEEDINGS**

#### **5 Meaning of “extradition proceedings”**

In this Part “extradition proceedings” means proceedings before a court in Jersey under the [Extradition \(Jersey\) Law 2004](#).

#### **6 Extradition proceedings**

- (1) Where –
  - (a) the Attorney General 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 Jersey,  
the Attorney General shall inform the court of the request.
- (2) 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 should be made.
- (3) Where a delivery order is made and the extradition proceedings are still pending or in progress, the Attorney General –
  - (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 the Attorney General gives a direction under sub-paragraph (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).
- (5) The discontinuance under this paragraph of extradition proceedings in respect of an offence does not prevent the institution of fresh extradition proceedings in respect of the offence.

## **7 Power to suspend or revoke warrant or order**

- (1) Where a court makes a delivery order in respect of a person whose extradition has been ordered under the [Extradition \(Jersey\) Law 2004](#), it 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 3**

### **OTHER DELIVERY PROCEEDINGS**

## **8 Meaning of “other delivery proceedings”**

In this Part “other delivery proceedings” means proceedings before a court in Jersey for a delivery order under the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Jersey) Order 1997<sup>11</sup> (Order in Council, registered by the Royal Court on 12th February 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.

## **9 Delivery proceedings**

- (1) Where –
  - (a) the Attorney General 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 a court in Jersey,
- the Attorney General shall consult the ICC and the relevant International Tribunal.
- (2) The Attorney General 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 should be made.
- (4) Where a delivery order is made under Part 2 of this Law and the other delivery proceedings are still pending or in progress, the Attorney General –
  - (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 the Attorney General gives a direction under sub-paragraph (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 2 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.

## **10 Power to suspend or revoke previous delivery order**

- (1) Where a court makes a delivery order 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) (Jersey) Order 1997<sup>12</sup> (Order in Council, registered by the Royal Court on 12th February 1997), the court may make any order necessary to enable the person to be delivered up under Part 2 of this Law.
- (2) The court may, in particular, suspend or revoke the other delivery order.

**SCHEDULE 3**

(Article 24(3))

**RIGHTS OF PERSONS DURING INVESTIGATION: ARTICLE 55***Article 55 of the ICC Statute***“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**

(Article 30)

**TAKING OF FINGERPRINTS OR NON-INTIMATE SAMPLES****1 Nomination of court to supervise taking of evidence**

Where the Attorney General –

- (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, the Attorney General shall nominate a court in Jersey to supervise the taking of the person's fingerprints or a non-intimate sample (or both).

**2 Order to provide evidence**

- (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 Article 1(2) of the 2003 Law; and
  - (b) Where relevant, Article 58(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.

**3 Requirement to attend and provide evidence**

- (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 the person must so attend; and
  - (b) may direct the person 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 the person's arrest; and
  - (b) the person may be detained for such period as is necessary to enable the necessary identification evidence to be taken,and the court shall inform the person concerned of the effect of this sub-paragraph.



- (4) Sub-paragraphs (1) to (3) do not apply where the person concerned is in custody or is otherwise lawfully detained.
- (5) In that case the necessary identification evidence may be taken at the place where the person is detained or at such other place as the nominated court may direct.

#### **4 Consent to taking of evidence**

- (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 sub-paragraph (1) “the appropriate consent” has the meaning given by Article 1(1) of the 2003 Law.
- (3) The court shall inform the person concerned of the effect of this paragraph.

#### **5 Taking of evidence without consent**

- (1) A police officer may, if authorized by a police officer of a rank not lower than that of inspector, or by the Connétable or a Centenier of the parish, take the necessary identification evidence without consent.
- (2) An authorization under sub-paragraph (1) may be given orally or in writing, but if 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 authorization given under sub-paragraph (1), the person must be informed that the authorization has been given.

#### **6 Record of certain matters to be made**

- (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 authorization given under paragraph 5(1); and
  - (c) the fact that the person has been informed under paragraph 5(3) of the giving of such authorization.
- (2) A copy of the record shall be sent together with the material obtained under this Schedule to the Attorney General for transmission to the ICC.

#### **7 Checking of fingerprints or samples**

- (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 Article 58(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 sub-paragraph (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 the said Article 58(1).
- (5) For the purposes of this paragraph a “relevant offence” means an ICC crime or an offence under Part 5.
- (6) Before fingerprints or a sample are taken from a person under this Schedule, that person must be informed that they may be used as mentioned in this paragraph.

## **8 Destruction of fingerprints and samples**

Article 60 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 Jersey.

**SCHEDULE 5**

(Article 33)

**INVESTIGATION OF PROCEEDS OF ICC CRIME****PART 1****INTERPRETATION****1 Interpretation**

- (1) In this Schedule –  
“items subject to legal privilege” and “premises” have the same meanings as in the 2003 Law; and  
“police officer” includes an officer within the meaning of the [Customs and Excise \(Jersey\) Law 1999](#).
- (2) In Part 2 “specified” means specified in an order made under that Part.

**PART 2****PRODUCTION AND ACCESS ORDERS****2 Application for order**

- (1) An order under this Part may be made by the Bailiff on an application made by the Attorney General pursuant to Article 33.
- (2) Any such application may be made *ex parte* in chambers.

**3 Grounds for making order**

- (1) The Bailiff may make an order under this Part if satisfied that there are reasonable grounds for suspecting –
  - (a) that a specified person has benefited 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 include items subject to legal privilege.
- (3) Paragraphs 4 and 5 set out the descriptions of order that may be made.

**4 Production or access orders: standard orders**

- (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 making the order 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) Where a production order or access order is made by virtue of paragraph 5, the provisions of this paragraph have effect subject to the modifications specified in that paragraph.

## **5 Production or access orders: special orders**

- (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 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 or access order made under sub-paragraph (2) must specify a person within sub-paragraph (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 4 has effect with the following modifications.
- (5) The modifications are that –
  - (a) the references in paragraph 4(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 4(2) to the date of the order shall be read as a reference to the date of the notification required by sub-paragraph (4)(a) of this paragraph.

## **6 Effect of order: general**

- (1) An order under this Part 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.

## **7 Effect of order: supplementary**

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

- (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 does not confer any right to production of, or access to, items subject to legal privilege.
- (4) Subject to sub-paragraph (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 Articles 23 and 24 of the 2003 Law material produced in pursuance of an order under this Part shall be treated as if it were material seized by a police officer.

## **8 Order in relation to material in possession of States etc.**

- (1) An order under this Part may be made in relation to material in the possession, custody or power of a department or administration of the States.
- (2) An order so made –
  - (a) shall be served as if the proceedings were civil proceedings against the department or administration of the States; and
  - (b) may require any officer of the department or administration, 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.

## **PART 3**

### **SEARCH WARRANTS**

## **9 Application for warrant**

A search warrant may be issued under this Part by the Bailiff on an application by the Attorney General pursuant to Article 33.

## **10 Effect of warrant**

- (1) A search warrant issued under this Part authorizes 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 privilege.

**11 Grounds for issue of warrant**

- (1) The Bailiff may issue a search warrant under this Part 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 benefited from an ICC crime;
  - (b) that there are grounds for making a production order or access order under paragraph 3 in relation to material on the premises; and
  - (c) that it would not be appropriate to make a production order 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 benefited 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 benefited 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.

**SCHEDULE 6<sup>13</sup>**

(Article 34)

**FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE****1 Interpretation**

(1) In this Schedule –

“freezing order” means 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;

“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 Jersey;

“property” includes money and all other property, movable or immovable, including intangible or incorporeal property.

(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).

**2 Application for freezing order**

(1) A freezing order may be made by the Royal Court on an application by the Attorney General pursuant to Article 34.

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

**3 Grounds for making order**

The 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.

**4 Notice of freezing order**

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

**5 Variation or revocation of order**

- (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.

**6 Power to appoint receiver**

- (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 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 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 bad faith.

**7 Seizure to prevent removal from jurisdiction**

- (1) Where a freezing order has been made, the Viscount or a police officer may, for the purpose of preventing any property specified in the order from being removed from Jersey, seize the property.
- (2) Property seized under this paragraph shall be dealt with in accordance with the directions of the Royal Court.

**8 Immovable property**

Where it appears to the Royal Court that a freezing order made by it may affect immovable property situate in Jersey, it shall order the registration of the order in the Public Registry.

**9 Bankruptcy**

- (1) Where a person is adjudged bankrupt –
  - (a) property for the time being subject to a freezing order made before that person was adjudged bankrupt; and
  - (b) any proceeds of property realised by virtue of paragraph 6(2) for the time being in the hands of a receiver appointed under that paragraph,



is excluded from the property of the bankrupt for the purposes of the 1990 Law.

- (2) Where a person has been adjudged bankrupt, the powers conferred on a receiver appointed under paragraph 6 shall not be exercised in relation to property for the time being comprised in the property of the bankrupt for the purposes of the 1990 Law.
- (3) Nothing in the 1990 Law shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

## **10 Winding up**

- (1) Where an order for the winding up of a company has been made under the 1991 Law, or a resolution has been passed by a company for voluntary winding up under that Law, 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 6(2) for the time being in the hands of a receiver appointed under that paragraph.
- (2) Where such an order has been made or such a resolution has been passed, the powers conferred on a receiver appointed under paragraph 6 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 the liquidator 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 1991 Law 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 1991 Law; and
  - “the relevant time” means –
    - (a) where no order for the winding up of the company has 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 petition 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.

## **11 Protection of trustees etc.**

- (1) This paragraph applies where the Viscount, an interim receiver, a liquidator or provisional liquidator, 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) The Viscount, interim receiver, liquidator or provisional liquidator, 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 bad faith.
- (3) The Viscount, interim receiver, liquidator or provisional liquidator, 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) Sub-paragraphs (1) to (3) are without prejudice to the generality of any provision contained in the 1990 Law or the 1991 Law.

**SCHEDULE 7**

(Article 44(6))

**GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES: ARTICLES 6 TO 9 OF THE ICC STATUTE***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 sterilization, 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) Conscripting 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) Conscripting 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**

(Article 48(6))

**OFFENCES AGAINST THE ICC: ARTICLE 70.1 OF THE ICC STATUTE***“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.”.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
International Criminal Court (Jersey) Law 2014	<a href="#">L.31/2014</a>	5 January 2015 ( <a href="#">R&amp;O.188/2014</a> )
International Criminal Court (Amendment) (Jersey) Law 2016	<a href="#">L.9/2016</a>	22 April 2016
International Co-operation (Protection from Liability) (Jersey) Law 2018	<a href="#">L.29/2018</a>	18 June 2019 ( <a href="#">R&amp;O.48/2019</a> )
Criminal Procedure (Bail) (Jersey) Law 2017	<a href="#">L.20/2017</a>	24 July 2019 ( <a href="#">R&amp;O.62/2019</a> )
Criminal Procedure (Consequential and Supplementary Amendments) (Jersey) Regulations 2021	<a href="#">R&amp;O.94/2021</a>	1 October 2021

### Table of Renumbered Provisions

Original	Current
58	spent, omitted
59(1)	58
59(2)	spent, omitted

### Table of Endnote References

<sup>1</sup> Article 5(9)	<i>amended by R&amp;O.94/2021</i>
<sup>2</sup> Article 14(2)	<i>substituted by L.20/2017</i>
<sup>3</sup> Article 14(3)	<i>substituted by L.20/2017</i>
<sup>4</sup> Article 14(4)	<i>substituted by L.20/2017</i>
<sup>5</sup> Article 14(5)	<i>amended by L.20/2017</i>
<sup>6</sup> Article 14(6)	<i>amended by L.20/2017</i>
<sup>7</sup>	<i>Statutory Instrument 1997/283 of the United Kingdom</i>
<sup>8</sup> Article 38(5)	<i>amended by L.9/2016, R&amp;O.94/2021</i>
<sup>9</sup>	<i>Statutory Instrument 1997/283 of the United Kingdom</i>
<sup>10</sup> Schedule 1	<i>amended by L.9/2016</i>
<sup>11</sup>	<i>Statutory Instrument 1997/283 of the United Kingdom</i>
<sup>12</sup>	<i>Statutory Instrument 1997/283 of the United Kingdom</i>
<sup>13</sup> Schedule 6	<i>amended by L.29/2018</i>