

STATES OF JERSEY



INTERNATIONAL CRIMINAL COURT ACT 2001: EXTENSION TO JERSEY

**Lodged au Greffe on 18th March 2014
by the Chief Minister**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to signify, pursuant to Article 31 of the States of Jersey Law 2005, whether they agree –

that a request be made to the Privy Council for the making of an Order in Council that would extend to Jersey, with appropriate modifications and adaptations, certain provisions of the International Criminal Court Act 2001 as summarised in the report of the Chief Minister dated 11th March 2014.

CHIEF MINISTER

REPORT

1. P.35/2014 contains the Draft International Criminal Court (Jersey) Law 201- (“the draft Law”) which has been lodged simultaneously with this Proposition. In order to understand fully the background to this Proposition, Members will need to refer to P.35/2014.
2. Article 31(1) of the States of Jersey Law 2005 requires the Chief Minister to lodge a Proposition when an Order in Council is proposed to be made to extend to Jersey provisions of an Act of the UK Parliament, so that the States may signify their views on it.
3. The International Criminal Court (“ICC”) is an independent, permanent court that tries persons accused of the most serious crimes of international concern, namely, genocide, crimes against humanity and war crimes. The International Criminal Court Act 2001 (“the 2001 Act”)¹ has enabled the United Kingdom –
 - to ratify the Rome Statute of the ICC² and so be among the Court’s founding members; and
 - to comply with all its obligations under the Rome Statute and accordingly to ratify.
4. The draft Law contained in P.35/2014 will enable the Rome Statute to be ratified in relation to Jersey, and similarly ensure that Jersey is able to comply with all its obligations under the Statute.
5. For only limited purposes it is necessary to extend certain sections of the 2001 Act by Order in Council (in amended form in some cases). A draft of the proposed Order in Council is contained in the **Appendix** to this Report.
6. The purpose of the Order in Council is to extend the following sections of the 2001 Act to Jersey –
 - section 23(5)
[to enable United Nations Security Council resolutions which might, depending upon their wording, override any immunities attaching to representatives of *all* States, including non-Parties, to be implemented in Jersey, where the Security Council refers a situation to the ICC for investigation and prosecution];
 - section 44
[to enable the transfer of prisoners between the United Kingdom and Jersey to serve the remainder of an ICC sentence];

¹ Along with corresponding legislation enacted by the Scottish Parliament

² <http://www.un.org/law/icc/index.html>

- section 45
[to enable the temporary transfer of a prisoner in custody between United Kingdom jurisdictions and Jersey for the purpose, for example, of attending criminal proceedings against the prisoner]
- section 70 (together with repeals made by section 83 and Schedule 10 relating to the Geneva Conventions Act 1957, the Genocide Act 1969 and the Geneva Conventions (Amendment) Act 1995)
[to make amendments to the Geneva Conventions Act 1957 to ensure that provisions governing the prosecution of grave breaches of the Geneva Conventions under that Act are consistent with those governing the prosecution of offences under ICC legislation].

11th March 2014

TEXT OF PROPOSED ORDER IN COUNCIL

2014 No.

INTERNATIONAL CRIMINAL COURT

International Criminal Court Act 2001 (Jersey) Order 201-

Made

Coming into force

At the Court at Buckingham Palace, the day of

Present,

The Queen's Most Excellent Majesty in Council

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

1. This Order may be cited as the International Criminal Court Act 2001 (Jersey) Order 201- and shall come into force on the seventh day after the day on which it is registered by the Royal Court of Jersey.

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

- (a) section 23(5) (extension of powers under United Nations Act 1946⁽⁴⁾);
- (b) sections 44 and 45 (transfer of prisoner);
- (c) section 70 (amendment of Geneva Conventions Act 1957⁽⁵⁾); and

⁽³⁾ 2001 c.17.

⁽⁴⁾ 1946 c.45.

⁽⁵⁾ 1957 c.52.

(d) section 83 and Schedule 10 (repeals)⁽⁶⁾, so far as they relate to the Geneva Conventions Act 1957, the Genocide Act 1969⁽⁷⁾ and the Geneva Conventions (Amendment) Act 1995⁽⁸⁾;
subject to the modifications set out in the Schedule to this Order.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE

Article 2

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

1. In section 44 (Transfer to another part of the United Kingdom: transfer of ICC sentence) —

- (a) in the heading omit the words “another part of”;
- (b) in subsections (1) and (3), for the words “relevant Minister” substitute “Secretary of State”;
- (c) in subsection (1), for the words “to another part of the United Kingdom” substitute “from Jersey to any part of the United Kingdom”;
- (d) for subsection (2) substitute —
“(2) No such order shall be made without the agreement of the Minister for Home Affairs; and no such order shall be made for the transfer of the prisoner to Scotland without the agreement of the Scottish Ministers.”; and
- (e) omit subsections (4), (5) and (6).

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

⁽⁶⁾ Entries in Schedule 10 to “The Army Act 1955” and “The Air Force Act 1995 (omitted) were repealed by section 378(2) of and Schedule 17 to the Armed Forces Act 2006 (c.52). Entries relating to “The Naval Discipline Act 1957” (omitted) were repealed by section 378(2) of and Schedule 17 to the Armed Forces Act 2006.

⁽⁷⁾ 1969 c.12.

⁽⁸⁾ 1995 c.27.

- (a) in the heading omit the words “another part of”;
 - (b) in subsections (1), (2) and (4), for the words “relevant Minister” substitute “Secretary of State”;
 - (c) in subsection (1)(a) and (b), for the words “another” substitute “any”;
 - (d) for subsection (3) substitute —
 - “(3) No such order shall be made without the agreement of the Minister for Home Affairs; and no such order shall be made for the transfer of the prisoner to Scotland without the agreement of the Scottish Ministers.”; and
 - (e) omit subsections (5) and (6).
3. In section 70 (Offences under section 1 of the Geneva Conventions Act 1957) —
- (a) in subsection (1)(a), omit the words “on indictment”;
 - (b) in subsection (2), in the inserted section 1A (Trial and punishment of offences under s. 1) —
 - (i) in subsection (2), for the words “is triable only on indictment” substitute “shall be tried before the Royal Court”;
 - (ii) in subsection (3), omit “—” and substitute “except by or with the consent of Her Majesty’s Attorney General for Jersey” and omit paragraphs (a) and (b);
 - (iii) omit subsection (4); and
 - (iv) in subsection (5), for the words “the part of the United Kingdom in which the proceedings are brought” substitute “Jersey”; and
 - (c) in subsection (3), for the words “commencement of this section” substitute “extension of this section to Jersey”.
4. In Schedule 10, in paragraph (a) of the second column omit the words “on indictment”.

EXPLANATORY NOTE

(This note is not part of the Order)

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

In particular, section 23(5) of the 2001 Act enables United Nations Security Council (UNSC) resolutions which might, depending upon their wording, override any immunities attaching to representatives of all States, including non-Parties, to be implemented in Jersey, where the UNSC refers a situation to the International Criminal Court (ICC) for investigation and prosecution. Section 44 of the 2001 Act enables the transfer of prisoners between the United Kingdom and Jersey to serve the remainder of an International Criminal Court sentence. Section 45 of the 2001 Act provides for the temporary transfer of a prisoner in custody between United Kingdom jurisdictions and the Jersey for the purpose, for example, of attending criminal proceedings against him or her. Section 70 of the 2001 Act makes various amendments to the Geneva Conventions Act 1957 to ensure that provisions governing the prosecution of grave breaches of the Geneva Conventions under that Act are consistent with those governing the prosecution of offences under the 2001 Act.