

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE INTERNATIONAL CRIMINAL COURT (IMMUNITIES AND PRIVILEGES) (BAILIWICK OF GUERNSEY) ORDINANCE, 2024

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The International Criminal Court (Immunities and Privileges) (Bailiwick of Guernsey) Ordinance, 2024" and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance is made under Schedule 1 to the International Criminal Court (Bailiwick of Guernsey) Law, 2019. It confers the legal capacities of a body corporate and privileges and immunities on the International Criminal Court ("ICC"). It also confers privileges and immunities on –

- (a) representatives of States participating in the proceedings of the ICC,
- (b) the ICC's judges, Prosecutor, Deputy Prosecutors and Registrar,
- (c) the Deputy Registrar, staff of the Office of the Prosecutor and staff of the Registry,
- (d) other personnel recruited locally by the Court,
- (e) counsel and persons assisting defence counsel,
- (f) witnesses,
- (g) victims,
- (h) experts,
- (i) other persons required to be present at the seat of the Court, and
- (j) representatives of States Parties attending meetings of the Assembly of States Parties to the ICC Statute and its subsidiary organs ("the Assembly"), representatives of other States attending meetings of the Assembly as observers, and representatives of States and of intergovernmental organisations invited to meetings of the Assembly.

The International Criminal Court (Immunities and Privileges) (Bailiwick of Guernsey) Ordinance, 2024

THE STATES, in pursuance of their Resolution of the 24th September, 2013^a, and in exercise of the powers conferred on them by section 1(3) of, and paragraph 1 of Schedule 1 to, the International Criminal Court (Bailiwick of Guernsey) Law, 2019^b, and all other powers enabling them in that behalf, hereby order:-

The Court.

1. (1) The Court shall have the legal capacities of a body corporate.
- (2) The Court shall have the like inviolability of its official archives and premises as, in accordance with the 1961 Convention Articles, is accorded in respect of the official archives and premises of a diplomatic mission.
- (3) The Court, and its property, funds and assets, wherever located and by whomsoever held, shall be immune from suit and legal process, except in so far as the Court has expressly waived such immunity in any particular case.
- (4) The income of the Court shall not be liable to income tax under the Income Tax (Guernsey) Law, 1975^c.
- (5) The Court shall have the like relief from dues and taxes on its

^a Article XII of Billet d'État No. XV of 2013.

^b Order in Council No. X of 2022.

^c Ordres en Conseil Vol. XXV, p. 124. This enactment has been amended.

official premises as, in accordance with Article 23 of the 1961 Convention Articles, is accorded in respect of the premises of a diplomatic mission.

(6) The Court shall have exemption from duties under the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^d in respect of any goods imported or exported by the Court for its official use, subject to compliance with such conditions as the Chief Officer of Customs and Excise may determine.

(7) The Court shall have exemption from prohibitions and restrictions on importation or exportation of goods by the Court for its official use and in the case of any publications of the Court imported or exported by it.

Representatives of States participating in the proceedings of the Court.

2. (1) Except in so far as in any particular case any privilege or immunity is waived by the State which they represent, representatives of States participating in the proceedings of the Court shall enjoy, while exercising their official functions and during their journeys to and from the place of the proceedings of the Court -

- (a) the like immunity from personal arrest or detention and the like inviolability for all papers and documents as is accorded to a diplomatic agent,
- (b) immunity from suit and legal process (even after they have ceased to exercise their functions as representatives) in respect of acts, including words written or spoken, performed by them in the exercise

^d Ordres en Conseil Vol. XXIII, p. 573. This enactment has been amended.

of their official functions,

- (c) the like exemptions and privileges in respect of their personal baggage as in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent,
- (d) exemption from income tax in respect of salaries and emoluments paid to them as representatives,
- (e) exemptions whereby, for the purposes of any enactments relating to social security -
 - (i) services rendered for the Court by the representative shall be deemed to be excepted from any class of employment in respect of which contributions under those enactments are payable, but
 - (ii) no person shall be rendered liable to pay any contribution which that person would not be required to pay if those services were not deemed to be so excepted.

(2) Where the incidence of any form of taxation depends upon residence, a representative shall not be deemed to be resident in the Bailiwick, or any part thereof, during any period when that representative is present in the Bailiwick for the discharge of the person's duties.

(3) Subsections (1) and (2) shall not operate so as to confer any privilege or immunity on any person as the representative of the United Kingdom or on any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen or a British National (Overseas).

Judges, Prosecutor, Deputy Prosecutors and Registrar.

3. (1) Except in so far as in any particular case any privilege or immunity is waived as set out in subsection (6), the judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall enjoy -

- (a) when engaged on or with respect to the business of the Court, the like privileges and immunities as in accordance with the 1961 Convention Articles are accorded to the head of the mission within the meaning of the 1961 Convention Articles,
- (b) exemption from income tax in respect of salaries and emoluments (excluding pensions and annuities) received by them from the Court as judges, Prosecutor, Deputy Prosecutors or Registrar,
- (c) when residing in the Bailiwick for the purpose of holding themselves at the disposal of the Court, the privileges and immunities accorded to a diplomatic agent in accordance with the 1961 Convention Articles,
- (d) on journeys in or through the Bailiwick in connection with the exercise of their functions, the privileges and immunities accorded to a diplomatic agent in similar

circumstances under the 1961 Convention Articles,

provided that the provisions of this subsection shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in the Bailiwick.

(2) Except in so far as in any particular case any privilege or immunity is waived as set out in subsection (6), the judges, the Prosecutor, the Deputy Prosecutors and the Registrar after the expiry of their terms of office shall enjoy immunity from suit and legal process in respect of acts, including words written or spoken, performed by them in the exercise of their official functions for the Court, but the provisions of this subsection shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in the Bailiwick.

(3) Except in so far as in any particular case any privilege or immunity is waived as set out in subsection (6), the judges of the Court shall enjoy the privileges and immunities in subsection (1) after their term of office has expired if they continue to exercise their functions in accordance with Article 36, paragraph 10 of the ICC Statute, but the provisions of this subsection shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in the Bailiwick.

(4) Except in so far as in any particular case any privilege or immunity is waived as set out in subsection (6), the judges, the Prosecutor, the Deputy Prosecutors and the Registrar, if they are British citizens, British overseas territories citizens, British Overseas citizens, British Nationals (Overseas) or permanently resident in the Bailiwick, shall enjoy to the extent necessary for the independent performance of their functions -

- (a) the like immunity from personal arrest or detention and the like inviolability for all papers and documents relating to the exercise of their functions for the Court as is accorded to a diplomatic agent,
- (b) immunity from suit and legal process (even after the expiry of their terms of office) in respect of all acts, including words spoken or written, performed by them in the exercise of their official functions for the Court,
- (c) exemption from income tax in respect of salaries and emoluments (excluding pensions and annuities) received by them from the Court as judges, Prosecutor, Deputy Prosecutor, or Registrar.

(5) Where the incidence of any form of taxation depends on residence, any period during which the judges, the Prosecutor, the Deputy Prosecutors or the Registrar are present in the Bailiwick for the discharge of their functions for the Court shall not be considered as periods of residence in the Bailiwick.

- (6) Privileges and immunities may be waived -
 - (a) in the case of a judge or the Prosecutor, by an absolute majority of the judges,
 - (b) in the case of a Deputy Prosecutor, by the Prosecutor,
 - (c) in the case of the Registrar, by the Presidency.

Deputy Registrar, staff of the Office of the Prosecutor and staff of the Registry.

4. (1) Except in so far as in any particular case any privilege or immunity is waived as set out in subsection (3), the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry, as necessary for the independent performance of their functions, shall enjoy -

- (a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent,
- (b) immunity from suit and legal process (even after they have left the service of the Court) in respect of acts, including words spoken or written, performed by them in the exercise of their official functions for the Court,
- (c) the like inviolability for all official papers, documents and materials as is accorded to a diplomatic agent,
- (d) exemption from income tax in respect of the salaries and emoluments (excluding pensions and annuities) paid to them by the Court,
- (e) the like immunity from seizure of personal baggage as is accorded to a diplomatic agent,
- (f) exemption from inspection of personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by quarantine

regulations in the Bailiwick,

(g) the like exemption from duties (whether of customs or excise) and taxes on the importation, and re-exportation to their country of permanent residence, of articles which -

(i) at or about the time when the Deputy Registrar, the member of staff of the Office of the Prosecutor or the member of staff of the Registry first entered the Bailiwick to take up that post of employment for the Court in the Bailiwick, are imported for that person's personal use, including articles intended for the person's establishment, and

(ii) are articles which were in the person's ownership or possession, or which the person was under contract to purchase, immediately before the person entered the Bailiwick,

as in accordance with paragraph 1 of Article 36 of the 1961 Convention Articles is accorded to a diplomatic agent,

(h) exemptions whereby, for the purposes of any enactments relating to social security -

- (i) services rendered for the Court by the Deputy Registrar, member of staff of the Office of the Prosecutor or member of staff of the Registry shall be deemed to be excepted from any class of employment in respect of which contributions under those enactments are payable, but
- (ii) no person shall be rendered liable to pay any contribution which that person would not be required to pay if those services were not deemed to be so excepted.

(2) Subsection (1)(e), (f) and (g) shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in the Bailiwick.

(3) Privileges and immunities may be waived -

- (a) in the case of the Deputy Registrar and the staff of the Registry, by the Registrar,
- (b) in the case of the staff of the Office of the Prosecutor, by the Prosecutor.

Other locally recruited personnel.

5. Except in so far as in any particular case any privilege or immunity is waived by the head of the organ of the Court employing a member of such personnel, other personnel recruited by the Court locally shall enjoy -

- (a) immunity from suit and legal process (even after they have left the service of the Court) in respect of acts, including words spoken or written, performed by them in the exercise of their official functions for the Court,
- (b) exemptions whereby, for the purposes of any enactments relating to social security -
 - (i) services rendered for the Court by a member of the personnel recruited by the Court locally shall be deemed to be excepted from any class of employment in respect of which contributions under those enactments are payable, but
 - (ii) no person shall be rendered liable to pay any contribution which that person would not be required to pay if those services were not deemed to be so excepted.

Counsel and persons assisting defence counsel.

6. (1) Except in so far as in any particular case any privilege or immunity is waived by the Presidency and subject to production of the required certificate, counsel and persons assisting defence counsel in accordance with rule 22 of the Rules of Procedure and Evidence, to the extent necessary for the independent performance of their functions (including the time spent on journeys in that connection), shall enjoy -

- (a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent,
- (b) immunity from suit and legal process (even after they have ceased to exercise their functions) in respect of acts, including words spoken or written, performed by them in their official capacity,
- (c) the like inviolability for all papers, documents and materials relating to the exercise of their functions as is accorded to a diplomatic agent,
- (d) the like immunity from seizure of personal baggage as is accorded to a diplomatic agent,
- (e) exemption from inspection of personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by quarantine regulations in the Bailiwick.

(2) For the purposes of this section, the "**required certificate**" means the certificate under the signature of the Registrar provided to counsel and persons assisting defence counsel upon appointment, for the period required for the exercise of their functions, in accordance with the ICC Statute, the Rules of Procedure and Evidence, and the Regulations of the Court adopted pursuant to Article 52.

(3) Where the incidence of any form of taxation depends upon residence, counsel and persons assisting defence counsel shall not be deemed to be

resident in the Bailiwick during any period when they are present in the Bailiwick for the discharge of their functions.

(4) Subsections (1)(d) and (e) and subsection (3) shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in the Bailiwick.

Witnesses.

7. (1) Except in so far as in any particular case any privilege or immunity is waived by the Presidency and subject to the production of the required document, witnesses, to the extent necessary for their appearance before the Court for the purposes of giving evidence (including the time spent on journeys in that connection), shall enjoy -

- (a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent,
- (b) immunity from suit and legal process (even after their appearance and testimony before the Court) in respect of acts, including words spoken or written, performed by them in the course of their appearance and testimony before the Court,
- (c) the like inviolability for all papers, documents and materials relating to their appearance and testimony before the Court as is accorded to a diplomatic agent,
- (d) immunity from seizure of personal baggage unless

there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by quarantine regulations in the Bailiwick.

(2) For the purposes of this section, the "**required document**" means a document provided by the Court certifying that appearance before the Court by the witness is required by the Court, and specifying a time period during which such appearance is necessary.

(3) Subsection (1)(d) shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in the Bailiwick.

Victims participating in the proceedings of the ICC.

8. (1) Except in so far as in any particular case any privilege or immunity is waived by the Presidency and subject to production of the required document, victims, to the extent necessary for their appearance before the Court (including the time spent on journeys in that connection), shall enjoy -

- (a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent,
- (b) immunity from suit and legal process (even after their appearance before the Court) in respect of acts, including words spoken or written, performed by them in the course of their appearance before the Court,
- (c) immunity from seizure of their personal baggage,

unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by quarantine regulations in the Bailiwick.

(2) For the purposes of this section, the "**required document**" means a document provided by the Court certifying the participation of the victim in the proceedings of the Court and specifying a time period for that participation.

(3) Subsection (1)(c) shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in the Bailiwick.

Experts.

9. (1) Except in so far as in any particular case any privilege or immunity is waived by the head of the organ of the Court appointing the expert and subject to production of the required document, experts performing functions for the Court, to the extent necessary for the independent exercise of their functions (including the time spent on journeys in that connection), shall enjoy -

- (a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent,
- (b) immunity from suit and legal process (even after the termination of their functions) in respect of acts, including words spoken or written, performed by them in the course of the performance of their functions for the Court,

- (c) the like inviolability for all papers, documents and materials relating to their functions for the Court as is accorded to a diplomatic agent,
- (d) the like immunity from seizure of personal baggage as is accorded to a diplomatic agent,
- (e) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by quarantine regulations in the Bailiwick.

(2) For the purposes of this section, the "**required document**" means a document provided by the Court certifying that the expert is performing functions for the Court and specifying a time period during which those functions will last.

(3) Subsection (1)(d) and (e) shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in the Bailiwick.

Other persons required to be present at the seat of the Court.

10. (1) Except in so far as in any particular case any privilege or immunity is waived by the Presidency and subject to production of the required document, other persons required to be present at the seat of the Court, to the extent necessary for their presence at the seat of the Court (including the time spent on journeys in that connection), shall enjoy -

- (a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent,
- (b) immunity from suit and legal process (even after their presence at the seat of the Court) in respect of acts, including words spoken or written, performed by them in connection with their presence at the seat of the Court,
- (c) immunity from seizure of their personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by quarantine regulations in the Bailiwick.

(2) For the purposes of this section, the "**required document**" means a document provided by the Court certifying that the presence of the person is required at the seat of the Court and specifying a time period during which such presence is necessary.

(3) Subsection (1)(c) shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in the Bailiwick.

Representatives of States participating in the Assembly and its subsidiary organs and representatives of intergovernmental organisations.

11. (1) Except in so far as in any particular case any privilege or immunity is waived by the State or intergovernmental organisation which they represent, representatives of States Parties attending meetings of the Assembly,

representatives of other States attending meetings of the Assembly as observers in accordance with article 112, paragraph 1, of the ICC Statute, and representatives of States and of intergovernmental organisations invited to meetings of the Assembly shall, while exercising their official functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities -

- (a) the like immunity from personal arrest or detention and the like inviolability for all papers and documents as is accorded to a diplomatic agent,
- (b) immunity from suit and legal process (even after they have ceased to exercise their functions as representatives) in respect of acts, including words written or spoken, performed by them in the exercise of their official functions,
- (c) the like exemptions and privileges in respect of their personal baggage as in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent,
- (d) exemption from income tax in respect of salaries and emoluments paid to them as representatives,
- (e) exemptions whereby, for the purposes of any enactments relating to social security -
 - (i) services rendered for the Court by the representative shall be deemed to be excepted

from any class of employment in respect of which contributions under those enactments are payable, but

- (ii) no person shall be rendered liable to pay any contribution which that person would not be required to pay if those services were not deemed to be so excepted.

(2) Where the incidence of any form of taxation depends upon residence, a representative shall not be deemed to be resident in the Bailiwick, or any part thereof, during any period when that representative is present in the Bailiwick for the discharge of the person's duties.

(3) Subsections (1) and (2) shall not operate so as to confer any privilege or immunity on any person as a representative of the United Kingdom or on any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen or a British National (Overseas).

Interpretation.

12. (1) In this Ordinance, unless the context otherwise requires -

"**the 1961 Convention Articles**" means the Articles (being certain Articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in Schedule 1 to the Diplomatic Privileges Act 1964^e (and see subsection (2)),

^e An Act of Parliament (1964 c.81).

"**Assembly**" means the Assembly of States Parties to the ICC Statute and its subsidiary organs,

"**the Court**" means the International Criminal Court established by the ICC Statute,

"**Deputy Prosecutors**" means the Deputy Prosecutors elected by the Assembly of States Parties to the ICC Statute in accordance with article 42, paragraph 4, of the ICC Statute,

"**Deputy Registrar**" means the Deputy Registrar elected by the Court in accordance with article 43, paragraph 4, of the ICC Statute,

"**diplomatic agent**" has the meaning given in the 1961 Convention Articles,

"**diplomatic mission**" means a mission within the meaning of the 1961 Convention Articles,

"**ICC Statute**" means the Statute of the International Criminal Court done at Rome on 17th July, 1998,

"**the Law**" means the International Criminal Court (Bailiwick of Guernsey) Law 2019,

"**the Presidency**" means the organ of the Court composed of the President and the first and second Vice-Presidents of the Court elected in accordance with article 38, paragraph 1, of the ICC Statute,

"Prosecutor" means the Prosecutor elected by the Assembly of States Parties to the ICC Statute in accordance with article 42, paragraph 4, of the ICC Statute,

"Registrar" means the Registrar elected by the Court in accordance with article 43, paragraph 4, of the ICC Statute,

"representatives" -

- (a) in relation to intergovernmental organisations, means the executive heads of those organisations and any officials acting on their behalf, and
- (b) in relation to States, means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations,

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

"States Parties" means States Parties to the ICC Statute, and

"victims" means victims participating in the proceedings of the Court in accordance with rules 89 to 91 of the Rules of Procedure and Evidence.

(2) In this Ordinance, references to the 1961 Convention Articles shall be construed as if, for the purposes of the Diplomatic Privileges Act 1964, the Bailiwick were a part of the United Kingdom.

Extent.

13. This Ordinance has effect in the Bailiwick of Guernsey.

Citation.

14. This Ordinance may be cited as the International Criminal Court (Immunities and Privileges) (Bailiwick of Guernsey) Ordinance, 2024.

Commencement.

15. This Ordinance shall come into force on the 1st October, 2024.