

PROJET DE LOI

ENTITLED

The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* No. VII of 2001 (Ordres en Conseil Vol. XLI, p. 240); as amended by the Government of Alderney (Amendment) Law, 2000 (No. I of 2000, Ordres en Conseil Vol. XL, p. 15); the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007 (No. IX of 2008); the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010 (No. XXXVIII of 2010); the Prison (Guernsey) Ordinance, 2013 (No. ** of 2013). See also the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Government of Alderney Law, 2004 (No. III of 2005).

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The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001

THE STATES, in pursuance of their Resolution of the 26th day of July 2000^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Mutual service of process

Service of overseas process in the Bailiwick.

1. (1) This section has effect where Her Majesty's Procureur receives from the government of, or other authority in, a country or territory outside the Bailiwick –

- (a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country or territory, or
- (b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of that jurisdiction,

^a Article 3 of Billet d'État No. XVIII of 2000.

together with a request for it to be served on a person in the Bailiwick.

(2) Her Majesty's Procureur may cause the process or document to be served on the person concerned by post or, if the request is for personal service, direct the designated person to cause it to be personally served on him.

(3) Service by virtue of this section of any process mentioned in subsection (1)(a) shall not impose any obligation under the law of the Bailiwick to comply with it.

(4) Any such process served by virtue of this section shall be accompanied by a notice –

- (a) stating the effect of subsection (3),
- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country or territory where it was issued, and
- (c) indicating that under that law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him in criminal proceedings in the Bailiwick.

(5) Where the designated person is directed under this section to cause any process or document to be served personally he shall after it has been served inform Her Majesty's Procureur when it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if the

designated person has been unable to cause the process or the document to be served he shall forthwith inform Her Majesty's Procureur of that fact and of the reason.

Service of Bailiwick process overseas.

2. (1) Process of the following descriptions, that is to say –
- (a) a summons requiring a person charged with an offence to appear before a court in the Bailiwick, or
 - (b) a summons or order requiring a person to attend before a court in the Bailiwick for the purpose of giving evidence in criminal proceedings,

may be issued or made notwithstanding that the person concerned is outside the Bailiwick and may be served outside the Bailiwick in accordance with arrangements made by Her Majesty's Procureur.

(2) Service of any process outside the Bailiwick by virtue of this section shall not impose any obligation under the law of the Bailiwick to comply with it and accordingly failure to do so shall not constitute a contempt of court or be a ground for issuing a warrant to secure the attendance of the person in question.

(3) Subsection (2) is without prejudice to the service of any process (with the usual consequences for non-compliance) on the person in question if subsequently effected in the Bailiwick.

Mutual provision of evidence

Overseas evidence for use in the Bailiwick.

3. (1) Where it appears to Her Majesty's Procureur –
- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and
 - (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,

he may issue a letter ("**a letter of request**") requesting assistance in obtaining outside the Bailiwick such evidence as is specified in the letter for use in the proceedings or investigation.

(2) Where it appears to the Bailiff that proceedings in respect of an offence have been instituted, he may, on the application of the person charged in the proceedings, issue a letter of request, requesting assistance in obtaining outside the Bailiwick such evidence as is specified in the letter for use in the proceedings.

(3) Her Majesty's Procureur shall transmit a letter of request either –

- (a) to a court or tribunal exercising jurisdiction in the place where the evidence is to be obtained, or
- (b) to any authority recognised by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

(4) In this section "**evidence**" includes documents and other

articles.

(5) Evidence obtained by virtue of a letter of request shall not without the consent of such a court, tribunal or authority as is mentioned in subsection (3) be used for any purpose other than that specified in the letter.

(6) If the court, tribunal or authority that supplied a document or other article pursuant to a letter of request so requests the document or other article shall be returned to that court, tribunal or authority when it is no longer required for the purpose stated in the letter of request or for any other purpose for which consent has been obtained in accordance with subsection (5).

(7) Evidence obtained by virtue of a letter of request shall, without being sworn to by a witness, be admissible in evidence and in exercising any discretion to exclude evidence otherwise admissible in relation to a statement contained in evidence taken pursuant to a letter of request the court before which it is sought to introduce that evidence shall have regard –

- (a) to whether it was possible to challenge the statement by questioning the person who made it, and
- (b) if proceedings have been instituted, to whether local law allowed the parties to the proceedings to be legally represented when the evidence was taken.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or

exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Bailiwick evidence for use overseas.

4. (1) This section has effect where Her Majesty's Procureur receives –

- (a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside the Bailiwick or a prosecuting authority in such a country or territory, or
- (b) from any other authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies,

a request for assistance in obtaining evidence in the Bailiwick in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory.

(2) Subject to subsection (3) if Her Majesty's Procureur is satisfied that –

- (a) an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and
- (b) proceedings in respect of that offence have been

instituted in that country or territory or that an investigation into that offence is being carried on there,

he may, if he thinks fit, by notice request the appropriate court to receive such of the evidence to which the request relates as may appear to the appropriate court to be appropriate for the purpose of giving effect to the request.

(3) In this section "**evidence**" includes documents and other articles.

(4) [Schedule 1] to this Law shall have effect with respect to the proceedings before the appropriate court in pursuance of a notice under subsection (2).

NOTE

In section 4, the words in square brackets in subsection (4) were substituted by the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 2, with effect from 19th May, 2008.

[Hearing witnesses in the Bailiwick through television links.]

4A. (1) This section applies where Her Majesty's Procureur receives a request, from an authority mentioned in subsection (3) ("**the external authority**") for a person in the Bailiwick to give evidence through a live television link in criminal proceedings before a court or tribunal in a country or territory outside the Bailiwick.

(2) "**Criminal proceedings**" include any proceedings on an appeal before a court or tribunal against a decision in administrative proceedings.

(3) The authority referred to in subsection (1) is the authority in that country or territory which appears to Her Majesty's Procureur to have the function of making requests of the kind to which this section applies.

(4) Her Majesty's Procureur shall, unless he considers it inappropriate to do so, by notice specify the appropriate court where the witness may be heard in the proceedings in question through a live television link.

(5) Anything done by the witness in the presence of the appropriate court which, if it were done in proceedings before the appropriate court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the appropriate court.

(6) A statement made on oath by a witness giving evidence in pursuance of this section is to be treated for the purposes of the offence of perjury as made in proceedings before the appropriate court.

(7) Part 1 of Schedule 2 (evidence given by television link) has effect.

(8) Subject to subsections (5) and (6) and the provisions of Schedule 2, evidence given pursuant to this section is not to be treated for any purpose as evidence given in proceedings in the Bailiwick.]

NOTE

Section 4A was inserted by the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 3, with effect from 19th May, 2008.

Hearing witnesses in the Bailiwick by telephone.

4B. (1) This section applies where Her Majesty's Procureur receives a request from an authority mentioned in subsection (3) ("**the external authority**") for a person in the Bailiwick to give evidence by telephone in criminal proceedings before a court or tribunal in a country or territory outside the Bailiwick.

(2) "**Criminal proceedings**" include any proceedings on an appeal before a court or tribunal against a decision in administrative proceedings.

(3) The authority referred to in section (1) is the authority in that country or territory which appears to Her Majesty's Procureur to have the function of making requests of the kind to which this section applies.

(4) A request from the external authority under subsection (1) must –

- (a) specify the court or tribunal in the requesting country or territory,
- (b) give the name and address of the witness,
- (c) state that the witness is willing to give evidence by telephone in the proceedings before that court or tribunal.

(5) Her Majesty's Procureur shall, unless he considers it inappropriate to do so, by notice specify the appropriate court where the witness may be heard in the proceedings in question by telephone.

(6) Anything done by the witness in the presence of the appropriate court which, if it were done in proceedings before the appropriate court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the appropriate court.

(7) A statement made on oath by a witness giving evidence in pursuance of this section is to be treated for the purposes of the offence of perjury as made in proceedings before the appropriate court.

(8) Part 2 of Schedule 2 (evidence given by telephone) has effect.

(9) Subject to subsections (6) and (7) and the provisions of Schedule 2, evidence given pursuant to this section is not to be treated for any purpose as evidence given in proceedings in the Bailiwick.]

NOTE

Section 4B was inserted by the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 3, with effect from 19th May, 2008.

Transfer of Bailiwick prisoner to give evidence or assist investigation overseas.

5. (1) The Bailiff may, on hearing Her Majesty's Procureur in chambers, if he thinks fit, issue a warrant providing for any person ("**a prisoner**") serving a sentence in the States Prison to be transferred to a country or territory outside the Bailiwick for the purpose –

- (a) of giving evidence in criminal proceedings there, or
- (b) of being identified in, or otherwise by his presence

assisting, such proceedings or the investigation of an offence.

(2) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being transferred as mentioned in subsection (1) and that consent may be given either –

- (a) by the prisoner himself, or
- (b) in circumstances in which it appears to the Bailiff inappropriate, by reason of the prisoner's physical or mental condition or his youth, for him to act for himself, by a person appearing to the Bailiff to be an appropriate person to act on his behalf,

but a consent once given shall not be capable of being withdrawn after the issue of the warrant.

(3) The effect of a warrant under this section shall be to authorise –

- (a) the taking of the prisoner to a place in the Bailiwick and his delivery at a place of departure from the Bailiwick into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred, and
- (b) the bringing back of the prisoner to the Bailiwick and his transfer in custody to the States Prison.

(4) Where a warrant has been issued in respect of a prisoner under this section he shall be deemed to be in legal custody at any time when being in the Bailiwick or on board a Bailiwick or British ship, or aircraft, he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(5) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a police officer –

(a) in the part of the Bailiwick in which that person is for the time being, or

(b) if he is outside the Bailiwick, in the part of the Bailiwick to or from which the prisoner is to be taken under the warrant.

(6) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a police officer or by any person who, at the place in question has, under subsection (5), the powers of a police officer in that place and taken to any place to which he may be taken under the warrant issued under this section.

(7) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner and the reference in subsection (1) to a sentence shall be construed accordingly.

(8) Any period spent by a prisoner in custody outside of the Bailiwick as a result of this section shall for the purposes of [section 29 of the

Prison (Guernsey) Ordinance, 2013] be included in any calculation made to determine the date of discharge of the prisoner.

NOTES

In section 5, the words in square brackets in subsection (8) were substituted by the Prison (Guernsey) Ordinance, 2013, section 59, Schedule 7, with effect from 4th November, 2013, subject to the transitional and savings provisions in section 60 of, and Schedule 8 to, the 2013 Ordinance.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

Transfer of overseas prisoner to give evidence or assist investigation in the Bailiwick.

6. (1) This section has effect where –
- (a) a witness summons has been issued by or on behalf of Her Majesty's Procureur within the Bailiwick in criminal proceedings within the Bailiwick in respect of a person ("**a prisoner**") who is detained in custody in a country or territory outside the Bailiwick by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory, or
 - (b) it appears to Her Majesty's Procureur that it is desirable for a prisoner to be identified in, or otherwise by his presence to assist, such proceedings

or the investigation in the Bailiwick of an offence.

(2) If on hearing Her Majesty's Procureur in chambers the Bailiff is satisfied that the appropriate authority in the country or territory where the prisoner is detained will make arrangements for him to come to the Bailiwick to give evidence pursuant to the witness summons or as the case may be for the purpose mentioned in subsection (1)(b), he may issue a warrant under this section.

(3) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being brought to the Bailiwick to give evidence as aforesaid or, as the case may be, for the purpose mentioned in subsection (1)(b) but a consent once given shall not be capable of being withdrawn after the issue of the warrant.

(4) The effect of the warrant shall be to authorise –

- (a) the bringing of the prisoner to the Bailiwick,
- (b) the taking of the prisoner to, and his detention in custody at, such place or places in the Bailiwick as are specified in the warrant, and
- (c) the returning of the prisoner to the country or territory from which he has come.

(5) Subsections (4), (5) and (6) of section 5 shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(6) A person shall not be subject to the Immigration Act 1971^c as it has effect in the Bailiwick in respect of his entry into or presence in the Bailiwick in pursuance of a warrant under this section but if the warrant ceases to have effect whilst he is still in the Bailiwick –

- (a) he shall be treated for the purposes of that Act as if he had then illegally entered the Bailiwick, and
- (b) the provisions of Schedule 2 to that Act shall have effect accordingly except that paragraph 20(1) (liability of carrier for expenses of custody etc. of illegal entrant) shall not have effect in relation to directions for his removal given by virtue of this subsection.

(7) This section applies to a person detained in custody in a country or territory outside the Bailiwick in consequence of having been transferred there –

- (a) from the United Kingdom under the Repatriation of Prisoners Act 1984^d, or
- (b) under any similar provision or arrangement from any other country or territory,

as it applies to a person detained as mentioned in subsection (1)(a).

^c C. 77; extended to the Bailiwick by the Immigration (Guernsey) Order, 1993 (S.I. 1993/1796).

^d C. 47.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Additional co-operation powers

Search, etc, for material relevant to overseas investigation.

7. (1) If on an application made by a police officer the Bailiff is satisfied that –

- (a) criminal proceedings have been instituted against a person in a country or territory outside the Bailiwick or that a person has been arrested in the course of a criminal investigation carried on there or that there are reasonable grounds for suspecting that criminal proceedings will be instituted against a person in a country or territory outside the Bailiwick or that a person will be arrested in the course of a criminal investigation being carried on there,
- (b) the conduct constituting the offence which is the subject of the proceedings or investigation would, if it had taken place in any part of the Bailiwick, have constituted a criminal offence punishable with

imprisonment, and

- (c) there are reasonable grounds for suspecting that there is on premises in the Bailiwick evidence relating to the offence other than items subject to legal professional privilege,

he may issue a warrant authorising a police officer to enter if need be by force, and search those premises and to seize any such evidence found there.

(2) A police officer executing a warrant issued under subsection (1) may be accompanied by a person whom Her Majesty's Procureur has authorised to accompany the police officer.

(3) The power to search conferred by subsection (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence as is there mentioned and a police officer when executing a warrant may not seize any items which are subject to legal professional privilege.

(4) No application for a warrant shall be made by virtue of subsection (1) except in pursuance of a direction given by Her Majesty's Procureur in response to a request received –

- (a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question or a prosecuting authority in that country or territory, or
- (b) from any other authority in that country or territory which appears to him to have the function of making

requests for the purposes of this section,

and any evidence seized by a police officer by virtue of this section shall be furnished by him to Her Majesty's Procureur for transmission to that court, tribunal or authority.

(5) If in order to comply with the request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the police officer shall also furnish for transmission such document of that nature as may be specified in the direction given by Her Majesty's Procureur.

(6) If the evidence consists of a document the original or a copy shall be transmitted, and if it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Enforcement of overseas forfeiture orders.

8. (1) The States may by Ordinance provide for the enforcement in the Bailiwick of any order which –

(a) is made by a court in any country or territory outside

the Bailiwick designated for the purposes of this section by the Ordinance, and

- (b) is for the forfeiture and destruction, or for the forfeiture and other disposal, of anything in respect of which an offence to which this section applies has been committed or which was used or intended for use in connection with the commission of such an offence.

(2) Without prejudice to the generality of subsection (1) the provision that may be made by Ordinance by virtue of that subsection includes provision which, for the purpose of facilitating the enforcement of any order that may be made, has effect at times before there is an order to be enforced.

(3) Without prejudice to the generality of subsection (1) an Ordinance under this section may provide for the registration by the appropriate court of an order as a condition of its enforcement and prescribe requirements to be satisfied before an order can be registered.

(4) An Ordinance under this section may include such supplementary or incidental provisions as appear to the States to be necessary or expedient and may apply for the purposes of the Ordinance (with such modifications as appear to the States to be appropriate) any provision relating to confiscation or forfeiture orders under any other enactment.

(5) An Ordinance under this section may make different provision for different cases.

(6) This section applies to any offence which would constitute an indictable offence other than one of drug trafficking if it were to take place in the

Bailiwick.

(7) In subsection (6) "**drug trafficking**" means any conduct covered by the definition of "drug trafficking" or "drug trafficking offence" in the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^e.

(8) An Ordinance under this section may authorise the making of rules of court by the appropriate court for any purpose specified in the Ordinance.

NOTE

The following Ordinances have been made under section 8:

Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) (Bailiwick of Guernsey) Ordinance, 2007;
Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010.

[Designation of all countries on 28th July, 2010.]

8A. (1) With effect on and from the 28th July, 2010 any country or territory outside the Bailiwick which is not already designated under section 8 (including any country or territory which comes into existence after that date) is designated for the purposes of this Law and any Ordinance or subordinate legislation made under this Law.

(2) Without prejudice to the generality of subsection (1), a country or territory which is designated under that subsection is a designated country for the purposes of the Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) (Bailiwick of Guernsey) Ordinance, 2007.]

^e No. VIII of 2000.

NOTE

Section 8A was inserted by the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 1, with effect from 28th July, 2010.

General Provisions

Rules of Court.

9. (1) Provision may be made by the appropriate court by rules of court for any purpose for which it appears to the appropriate court that it is necessary or expedient that provision should be made in connection with any of the provisions of this Law.

(2) Rules made for the purposes of [either schedule] to this Law may, in particular, make provision with respect to the persons entitled to appear or take part in the proceedings to which that Schedule applies and for excluding the public from any such proceedings; and any such rules may amend the provisions of that Schedule.

(3) This section is without prejudice to the generality of any existing power to make rules of court.

NOTES

In section 9, the words in square brackets in subsection (2) were substituted by the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 4, with effect from 19th May, 2008.

The following Rules have been made by Order of the Royal Court under section 9:

Royal Court (International Co-operation) Rules, 2002.

[Power to amend Law by Ordinance.

9A. (1) The States may by Ordinance amend this Law.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances or rules (and vice versa).]

NOTES

Section 9A was substituted by the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 5, with effect from 19th May, 2008.

The following Ordinance has been made under section 9A:

Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010.

[General provisions as to subordinate legislation.

9B. (1) An Ordinance or rule under this Law –

- (a) may be amended or repealed by a subsequent Ordinance or rule, as the case may be, hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient including, without limitation, in the case of an Ordinance, provisions repealing, amending or modifying any

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enactment (whether passed before or after the commencement of this Law).

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

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

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

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

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

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

NOTE

Section 9B was substituted by the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 5, with effect from 19th May, 2008.

Interpretation.

10. (1) In this Law –

"the appropriate court" means –

- (a) as respects Guernsey, the Royal Court sitting as an Ordinary Court,
- (b) as respects Alderney, the Court of Alderney,
- (c) as respects Sark, the Court of the Seneschal of Sark,

"Bailiwick" means the Bailiwick of Guernsey and the territorial waters adjacent thereto,

"designated person" means –

- (a) in relation to Guernsey, Herm and Jethou, Her Majesty's Sergeant,
- (b) in relation to Alderney, the Clerk of the Court of Alderney,
- (c) in relation to Sark, the Prevôt,

"document" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in

legible form,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"police officer" means –

- (a) in relation to Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of the said salaried police force, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed [or deemed to be appointed pursuant to the provisions of an Ordinance made under section 46A] of the Government of Alderney Law, 1987^f,
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of the Island of Guernsey,
- (d) an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^g.

^f Ordres en Conseil Vol. XXX, p. 37; section 15 has been prospectively repealed and replaced by the Government of Alderney (Amendment) Law, 1999.

^g Ordres en Conseil Vol. XXIII, p. 273; and Vol. XXIII, p. 87.

"premises" includes any place and, in particular, includes –

- (a) any vehicle, vessel, or aircraft,
- (b) any offshore installations, and
- (c) any tent or moveable structure.

(2) The Interpretation (Guernsey) Law, 1948^h shall apply to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment, statutory instrument or rule of court is a reference thereto as amended, replaced or re-enacted (with or without modification), extended or applied.

NOTES

In section 10, the words in square brackets in paragraph (b) of the definition of the expression "officer of police" in subsection (1) were substituted by the Government of Alderney (Amendment) Law, 2000, section 2, with effect from 19th June, 2002.

In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with the provisions of section 25(1)(e), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of

^h Ordres en Conseil Vol. XIII, p. 355.

an agreement made under section 1 of the 1986 Law.

The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.

Repeals.

11. Section 5 of the Evidence (Proceedings in Other Jurisdictions) Act 1975ⁱ as it has effect in the Bailiwick shall cease to have force of law in the Bailiwick.

Transitional provisions.

12. (1) Nothing done in relation to any matter under or by virtue of section 5 of the Evidence (Proceedings in Other Jurisdictions) Act 1975 as it has effect in the Bailiwick before the commencement of this Law shall be invalidated by such commencement.

(2) Anything in the process of being done in relation to any matter under or by virtue of section 5 of the said Act at the commencement of this Law may be continued as if this Law were not in force.

(3) For the avoidance of doubt any procedure under this Law may be carried out notwithstanding that any offence or suspected offence occurred before the commencement of this Law.

Citation and commencement.

13. (1) This Law may be cited as the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001.

ⁱ C. 34; extended to the Bailiwick by the Evidence (Proceedings in Other Jurisdictions) (Guernsey) Order, 1980.

(2) This Law shall come into force on the day appointed by Ordinance of the States.

NOTE

The Law was brought into force on 1st July 2001 by the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 (Commencement) Ordinance, 2001, section 1.

SCHEDULE [1]

Section 4(4)

BAILIWICK EVIDENCE FOR USE OVERSEAS:
PROCEEDINGS OF APPROPRIATE COURT

Securing attendance of witnesses

1. The appropriate court shall have the like powers for securing the attendance of a witness for the purpose of the proceedings as it has for the purpose of other proceedings before the court.

Power to administer oaths

2. The appropriate court may in the proceedings take evidence on oath.

Privilege of witnesses

3. (1) A person shall not be compelled to give in the proceedings any evidence which he could not be compelled to give –

(a) in criminal proceedings in the Bailiwick, or

(b) subject to subparagraph (2), in criminal proceedings in the country or territory from which the request for the evidence has come.

(2) Subparagraph (1)(b) shall not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court, tribunal or authority which made the request.

(3) Where such a claim made by any person is not conceded as

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aforesaid he may (subject to the other provisions of this paragraph) be required to give the evidence to which the claim relates but the evidence shall not be transmitted to the court, tribunal or authority which requested it if a court in the country or territory in question, on the matter being referred to it, upholds the claim.

(4) Without prejudice to subparagraph (1) a person shall not be compelled under this Schedule to give any evidence if his doing so would be prejudicial to the security of the Bailiwick or the United Kingdom; and a certificate signed by or on behalf of the Lieutenant-Governor to the effect that it would be so prejudicial shall be conclusive evidence of that fact.

(5) Without prejudice to subparagraph (1) a person shall not be compelled under this Schedule to give any evidence in his capacity as an officer or servant of the Crown.

(6) In this paragraph references to giving evidence include references to answering any question and to producing any document or other article and the reference in subparagraph (3) to the transmission of evidence given by a person shall be construed accordingly.

Transmission of evidence

4. (1) The evidence received by the appropriate court shall be furnished to Her Majesty's Procureur for transmission to the court, tribunal or authority that made the request.

(2) If in order to comply with the request it is necessary for the evidence to be accompanied by any certificate, affidavit or other verifying document, the appropriate court shall also furnish for transmission such document

of that nature as may be specified in the notice to the appropriate court.

(3) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

Supplementary

5. For the avoidance of doubt it is hereby declared that, where the proceedings are before the Royal Court or the Court of Alderney, the Bankers Books Evidence (Guernsey) Law, 1954^j applies to the proceedings as it applies to other proceedings before the Royal Court or (as the case may be) the Court of Alderney.

6. No order for costs shall be made in the proceedings.

NOTE

The Schedule was renumbered as Schedule 1 by the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 6(1), with effect from 19th May, 2008.

^j Ordres en Conseil Vol. XVI, p. 24.

EVIDENCE GIVEN BY TELEVISION LINK OR TELEPHONE

PART I

EVIDENCE GIVEN BY TELEVISION LINK

Securing attendance of witness

1. The appropriate court has the like powers for securing the attendance of the witness to give evidence through the link as it has for the purpose of proceedings before the appropriate court.

Conduct of hearing

2. The witness is to give evidence in the presence of the appropriate court.

3. The appropriate court is to establish the identity of the witness.

4. The appropriate court is to intervene where it considers it necessary to do so to safeguard the rights of the witness.

5. The evidence is to be given under the supervision of the court or tribunal of the country or territory concerned.

6. The evidence is to be given in accordance with –

(a) the laws of the country or territory, and

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- (b) any measures for the protection of the witness agreed between Her Majesty's Procureur and the authority in that country or territory which appears to him to have the function of entering into agreements of that kind.

7. Rules of court under section 9 may make provision for the use of interpreters.

Privilege of witness

8. (1) The witness cannot be compelled to give any evidence which he could not be compelled to give in criminal proceedings before the appropriate court.

(2) The witness cannot be compelled to give any evidence if his doing so would be prejudicial to the security of the Bailiwick.

(3) A certificate signed by or on behalf of Her Majesty's Procureur to the effect that it would be prejudicial for that person to do so is conclusive evidence of that fact.

(4) The witness cannot be compelled to give any evidence in his capacity as an officer or servant of the Crown.

(5) Subparagraphs (2) and (4) are without prejudice to the generality of subparagraph (1).

Record of hearing

9. Rules of court under section 9 may make provision –

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- (a) for the drawing up of a record of the hearing,
- (b) for sending the record to Her Majesty's Procureur for transmission to the external authority.

PART II
EVIDENCE GIVEN BY TELEPHONE

Notification of witnesses

10. The appropriate court must notify the witness of the time when and the place at which he is to give evidence by telephone.

Conduct of hearing

11. The appropriate court must be satisfied that the witness is willingly giving evidence by telephone.

12. The witness is to give evidence in the presence of the appropriate court.

13. The appropriate court is to establish the identity of the witness.

14. The evidence is to be given under the supervision of the court or tribunal of the country or territory concerned.

15. The evidence is to be given in accordance with the laws of that country or territory.

16. Rules of court under section 9 may make provision for the use of interpreters.]

NOTE

Schedule 2 was inserted by the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 6(2), with effect from 19th May, 2008.
