

STATES OF JERSEY



DRAFT INTERNATIONAL CRIMINAL COURT (IMMUNITIES AND PRIVILEGES) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 22nd July 2016
by the Chief Minister

STATES GREFFE



Jersey

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REPORT

On 15th May 2014, the States adopted the [International Criminal Court \(Jersey\) Law 2014](#) (“the 2014 Law”) which was brought into force on 5th January 2015 by an Appointed Day Act (*see* [R&O.188/2014](#)), and was later amended by the [International Criminal Court \(Amendment\) \(Jersey\) Law 2016](#) (“the 2016 Law”), which came into force on 22nd April 2016.

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 ICC is based on a treaty – the Rome Statute of the International Criminal Court (“the Rome Statute”) – adopted on 17th July 1998. It is intended to ask H.M. Government to extend its ratification of the Rome Statute to Jersey by Order in Council. Jersey will join 121 other countries that have ratified the Rome Statute.

The purpose of the 2016 Law (among other things) was to amend Schedule 1 to the 2014 Law as follows –

- Paragraph 1 was amended to empower the States by Regulations to confer on the ICC the legal capacities of a body corporate, and to provide that the ICC and certain personnel and others associated with the ICC shall have certain privileges and immunities;
- Paragraph 2 was amended to empower the States, by Regulations, to make provision for giving effect to Rules of Procedure and Evidence having effect under the Rome Statute or under any related International Agreement which extends to Jersey.

These Regulations invoke the powers in paragraph 1, and would confer the legal capacities of a body corporate and privileges and immunities on the ICC; and would confer privileges and immunities on representatives of States participating in the proceedings of the ICC, its judges, Prosecutor, Deputy Prosecutors, Registrar, Deputy Registrar, staff of the Office of the Prosecutor, staff of the Registry, other personnel recruited locally by the ICC, counsel and persons assisting defence counsel, witnesses, victims, experts and other persons required to be present at the seat of the Court, in accordance with the relevant Agreements on the Privileges and Immunities of the ICC.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations are made under the International Criminal Court (Jersey) Law 2014. They confer privileges and immunities on the International Criminal Court (“Court”) and parties who are involved in the administration of, or proceedings involving, the Court. The privileges and immunities relate to such things as immunity from legal proceedings and exemption from taxation and vary to some extent depending on whom they are conferred but generally do not apply to those who have British citizenship or who are permanently resident in Jersey.

Regulation 1 is an interpretation provision.

Regulations 2 to 12 confer privileges and immunities on the following persons and bodies:

- the Court;
- the Court’s judges;
- the Prosecutor;
- Deputy Prosecutors;
- Registrar;
- Deputy Registrar;
- staff of the Office of the Prosecutor;
- staff of the Registry;
- other personnel recruited locally by the Court;
- counsel and other persons assisting defence counsel;
- witnesses, victims and other persons required to be present at the seat of the Court;
- representatives of States participating in the Assembly of States Parties to the Statute of the International Criminal Court and its subsidiary organs; and
- representatives of States and intergovernmental organizations invited to Assembly meetings.

Regulation 13 sets out the title of these Regulations and provides that they will come into force 7 days after the day they are made.



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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 1(3) and paragraph 1 of Schedule 1 to the International Criminal Court (Jersey) Law 2014¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“the 1961 Convention Articles” means such Articles of the Vienna Convention on Diplomatic Relations signed in 1961 as are set out in Schedule 1 to the Privileges and Immunities (Diplomatic, Consular, etc.) (Jersey) Law 1998²;

“Assembly” means the Assembly of States Parties including, where relevant, its subsidiary bodies established under article 112 of the ICC Statute;

“Court” means the International Criminal Court established by the ICC Statute;

“Deputy Prosecutors” means the Deputy Prosecutors elected by the Assembly under article 42, paragraph 4, of the ICC Statute;

“Deputy Registrar” means the Deputy Registrar elected by the Assembly under article 43, paragraph 4, of the ICC Statute;

“ICC Statute” means the Statute of the International Criminal Court done at Rome on 17th July 1998;

“the Presidency” means the organ of the ICC constituted under article 38, paragraph 3 of the ICC Statute and composed of the President and the first and second Vice-Presidents of the ICC elected under article 38, paragraph 1, of that Statute;

“Prosecutor” means the prosecutor elected by the Assembly under article 42, paragraph 4, of the ICC Statute;

“Registrar” means the Registrar elected by the judges under article 43, paragraph 4, of the ICC Statute;

“representatives” –

- (a) in relation to intergovernmental organizations, means the executive heads of those organizations 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;

“States Parties” means States Parties to the ICC Statute;

“the Rules” means the Rules of Procedure and Evidence adopted under article 51 of the ICC Statute;

“victims” means victims participating in the proceedings of the ICC in accordance with rules 89 to 91 of the Rules.

2 The Court

- (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 is accorded, in accordance with the 1961 Convention Articles, 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 (Jersey) Law 1961³.
- (5) The Court shall have the like relief from rates on its official premises as is accorded, in accordance with article 23 of the 1961 Convention Articles, in respect of the premises of a diplomatic mission.
- (6) The Court shall have exemption from duties under the Customs and Excise (Jersey) Law 1999⁴ in respect of any goods imported or exported by the Court for its official use, subject to compliance with such conditions as the Agent of the Impôts may determine.
- (7) The Court shall have exemption from any goods and services tax otherwise payable on the supply of goods or services under the Goods and Services Tax (Jersey) Law 2007⁵ for its official use, subject to compliance with such conditions as the Comptroller of Taxes may determine.

3 Representatives of States Participating in the Proceedings of the Court

- (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 of their official functions;
 - (c) the like exemptions and privileges in respect of their personal baggage as in accordance with article 36, paragraph 2, 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 the 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 or premiums under those enactments are payable, but
 - (ii) no person shall be rendered liable to pay any contribution or premium which he or she 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 Jersey during any period when he or she is present in Jersey for the discharge of his or her duties.
- (3) Paragraphs (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, a British National (Overseas) or permanently resident in Jersey.

4 Judges, Prosecutor, Deputy Prosecutors and Registrar

- (1) Except in so far as in any particular case any privilege or immunity is waived as set out in paragraph (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 a diplomatic mission;
 - (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 Jersey 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 Jersey 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 paragraph 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 Jersey.

- (2) Except in so far as in any particular case any privilege or immunity is waived as set out in paragraph (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 paragraph 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 Jersey.
- (3) Except in so far as in any particular case any privilege or immunity is waived as set out in paragraph (6), the judges of the Court shall enjoy the privileges and immunities in paragraph (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 paragraph 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 Jersey.
- (4) Except in so far as in any particular case any privilege or immunity is waived as set out in paragraph (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 Jersey, 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 Jersey for the discharge of their functions for the Court shall not be considered as periods of residence in Jersey.

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- (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.

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

- (1) Except in so far as in any particular case any privilege or immunity is waived as set out in paragraph (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 Jersey;
 - (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 Jersey to take up that post of employment for the Court in Jersey, are imported for his or her personal use, including articles intended for his or her establishment, and
 - (ii) are articles which were in his or her ownership or possession, or which he or she was under contract to purchase, immediately before he or she entered Jersey, as in accordance with article 36, paragraph 1, of the 1961 Convention Articles, is accorded to a diplomatic agent;
 - (h) exemptions whereby, for the purposes of the enactments relating to social security –

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- (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 or premiums under those enactments are payable, but
 - (ii) no person shall be rendered liable to pay any contribution or premium which he or she would not be required to pay if those services were not deemed to be so excepted.
 - (2) Paragraph (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 Jersey.
 - (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.

6 Other locally recruited personnel

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 the 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 or premiums under those enactments are payable, but
 - (ii) no person shall be rendered liable to pay any contribution or premium which he or she would not be required to pay if those services were not deemed to be so excepted.

7 Counsel and persons assisting defence counsel

- (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, 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 Jersey.
- (2) For the purposes of this Regulation, 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 his or her functions, in accordance with the ICC Statute, the Rules and the regulations of the Court.
- (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 Jersey during any period when they are present in Jersey for the discharge of their functions.
- (4) Paragraphs (1)(d) and (e) and (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 Jersey.

8 Witnesses

- (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 Jersey.
- (2) For the purposes of this Regulation, 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) Paragraph (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 Jersey.

9 Victims participating in the proceedings of the ICC

- (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, 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 Jersey.
- (2) For the purposes of this Regulation, 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) Paragraph (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 Jersey.

10 Experts

- (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;

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- (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 Jersey.
- (2) For the purposes of this Regulation, 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) Paragraph (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 Jersey.

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

- (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 Jersey.
- (2) For the purposes of this Regulation, 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) Sub-paragraph (c) of paragraph (1) 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 Jersey.

12 Representatives of States participating in the Assembly and its subsidiary organs and representatives of intergovernmental organizations

- (1) Except in so far as in any particular case any privilege or immunity is waived by the State or intergovernmental organization 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

organizations 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 article 36, paragraph 2, 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 the 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 or premiums under those enactments are payable, but
 - (ii) no person shall be rendered liable to pay any contribution or premium which he or she 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 Jersey during any period when he or she is present in Jersey for the discharge of his or her duties.
- (3) Paragraphs (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) or permanently resident in Jersey.

13 Citation and commencement

These Regulations may be cited as the International Criminal Court (Immunities and Privileges) (Jersey) Regulations 201- and shall come into force 7 days after the day they are made.

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- 1* chapter 17.520
 - 2* chapter 21.805
 - 3* chapter 24.750
 - 4* chapter 24.660
 - 5* chapter 24.700