



International Criminal Court (Scotland) Act 2001

2001 asp 13

PART 1

OFFENCES

Offences

1 Genocide, crimes against humanity and war crimes

- (1) It shall be an offence for a person to commit genocide, a crime against humanity or a war crime.
- (2) Subsection (1) above applies to acts committed—
 - (a) in Scotland; or
 - (b) outwith the United Kingdom by a United Kingdom national or a United Kingdom resident.
- (3) The Genocide Act 1969 (c. 12) is repealed.
- (4) In subsection (1) above—
 - “genocide” means an act of genocide as defined in article 6;
 - “crime against humanity” means a crime against humanity as defined in article 7; and
 - “war crime” means a war crime as defined in article 8.2.
- (5) The relevant provisions of the articles mentioned in subsection (4) above are set out in schedule 1 to this Act.
- (6) For the purposes of this Part of this Act, no account shall be taken of any provision of the articles omitted from the text set out in that schedule.

2 Conduct ancillary to genocide etc.

- (1) It shall be an offence for a person to engage in conduct ancillary to an act that constitutes—
 - (a) an offence under section 1(1) of this Act; or
 - (b) an offence under this section.
- (2) Subsection (1) above applies where the conduct in question consists of or includes an act committed outwith Scotland by a United Kingdom national or a United Kingdom resident.
- (3) It shall be an offence for a person to engage in conduct ancillary to an act committed (or intended to be committed) outwith Scotland by a person other than a United Kingdom national or a United Kingdom resident that, if the act were committed in Scotland (or were committed by a United Kingdom national or a United Kingdom resident), would constitute—
 - (a) an offence under section 1(1) of this Act; or
 - (b) an offence under this section.
- (4) Subsection (3) above applies where the conduct in question consists of or includes an act committed—
 - (a) in Scotland; or
 - (b) outwith the United Kingdom by a United Kingdom national or a United Kingdom resident.
- (5) The references in subsections (1) and (3) above to conduct ancillary to an act are to conduct that would constitute an ancillary offence in relation to that act if—
 - (a) that conduct consisted of or included an act committed in Scotland; and
 - (b) that act were committed in Scotland.

3 Trial and punishment of main offences

- (1) This section applies in relation to—
 - (a) offences under section 1 of this Act;
 - (b) offences under section 2 of this Act; and
 - (c) offences ancillary to an offence within paragraph (a) or (b) above.
- (2) The offence shall be triable only on indictment.
- (3) If an offence is committed outwith Scotland proceedings may be taken in any place in Scotland; and the offence may for incidental purposes be treated as having been committed in that place.
- (4) A person convicted of—
 - (a) an offence involving murder; or
 - (b) an offence ancillary to an offence involving murder,shall be dealt with as for an offence of murder or, as the case may be, the corresponding ancillary offence in relation to murder.
- (5) Any person convicted of an offence (other than an offence involving murder or an offence ancillary to an offence involving murder) shall be liable to imprisonment for a term not exceeding 30 years.

- (6) In this section “murder” means the killing of a person in such circumstances as would, if committed in Scotland, constitute murder.

4 Offences in relation to the ICC

- (1) A person intentionally committing any of the acts mentioned in article 70.1 (offences against the administration of justice) may be dealt with as for the corresponding offence under the law of Scotland committed in relation to the High Court of Justiciary or the Court of Session.
- (2) The corresponding offences under the law of Scotland are—
- (a) in relation to article 70.1(a) (giving false testimony when under an obligation to tell the truth), an offence under section 44(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) or at common law;
 - (b) in relation to article 70.1(b) to (e) (other offences), an offence at common law; and
 - (c) in relation to article 70.1(f) (soliciting or accepting a bribe as an official of the ICC), an offence under section 1 of the Prevention of Corruption Act 1906 (c. 34) or at common law.
- (3) This section and, so far as may be necessary for the purposes of this section, the enactments and rules of law relating to the corresponding offences under the law of Scotland apply to acts committed—
- (a) in Scotland; or
 - (b) outwith the United Kingdom by a United Kingdom national or a United Kingdom resident.
- (4) If an offence under this section, or an offence ancillary to such an offence, is committed outwith the United Kingdom proceedings may be taken in any place in Scotland; and the offence may for incidental purposes be treated as having been committed in that place.
- (5) The relevant provisions of article 70.1 are set out in schedule 2 to this Act.

5 Responsibility of military commanders and other superiors

- (1) This section applies in relation to—
- (a) offences under this Part of this Act; and
 - (b) offences ancillary to such offences.
- (2) A military commander, or a person effectively acting as a military commander, shall be responsible for offences committed by forces under his effective command and control, or (as the case may be) his effective authority and control, as a result of his failure to exercise control properly over such forces where—
- (a) he either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences; and
 - (b) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (3) With respect to superior and subordinate relationships not described in subsection (2) above, a superior shall be responsible for offences committed by subordinates under

his effective authority and control, as a result of his failure to exercise control properly over such subordinates where—

- (a) he either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offences;
 - (b) the offences concerned activities that were within his effective responsibility and control; and
 - (c) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (4) A person responsible under this section for an offence shall be regarded as being art and part in the commission of the offence.
- (5) Nothing in this section shall be read as restricting or excluding—
- (a) any liability of a commander or other superior apart from this section; or
 - (b) the liability of any person other than a commander or other superior.

6 Proceedings against persons becoming resident in the United Kingdom

- (1) This section applies in relation to a person who—
- (a) commits acts outwith the United Kingdom at a time when that person is neither a United Kingdom national nor a United Kingdom resident; and
 - (b) subsequently becomes a United Kingdom resident.
- (2) Proceedings may be brought against such a person in Scotland for a substantive offence if—
- (a) that person is a United Kingdom resident at the time the proceedings are brought; and
 - (b) the acts in respect of which the proceedings are brought would have constituted that offence if they had been committed in Scotland.
- (3) Proceedings may be brought against such a person in Scotland for an offence ancillary to a substantive offence (or what would be such a substantive offence if committed in Scotland) if—
- (a) that person is a United Kingdom resident at the time the proceedings are brought; and
 - (b) the acts in respect of which the proceedings are brought would have constituted that ancillary offence if they had been committed in Scotland.
- (4) In this section a “substantive offence” means an offence under this Part of this Act other than an ancillary offence.
- (5) Nothing in this section shall be read as restricting the operation of any other provision of this Part of this Act.

Supplementary provisions

7 Meaning of “ancillary offence”

References in this Part of this Act to an ancillary offence are to—

- (a) being art and part in the commission of an offence;

- (b) inciting a person to commit an offence;
- (c) attempting or conspiring to commit an offence;
- (d) perverting, or attempting to pervert, the course of justice in connection with an offence; or
- (e) defeating, or attempting to defeat, the ends of justice in connection with an offence.

8 Mental element

- (1) References in this Part of this Act to a person committing—
- (a) genocide;
 - (b) a crime against humanity;
 - (c) a war crime; or
 - (d) any of the acts mentioned in article 70.1 (offences against the administration of justice),

shall be construed in accordance with this section.

- (2) Unless otherwise provided by—
- (a) the articles mentioned in the definition in section 1(4) of this Act of the crimes specified in subsection (1)(a) to (c) above;
 - (b) any relevant Elements of Crimes;
 - (c) section 4(1) of this Act or article 70.1; or
 - (d) section 5 of this Act,

a person shall be regarded as committing such an act or crime only if the material elements are committed with intent and knowledge.

- (3) For the purposes of subsection (2) above—
- (a) a person has intent—
 - (i) in relation to conduct, where the person means to engage in the conduct; and
 - (ii) in relation to a consequence, where the person means to cause the consequence or is aware that it will occur in the ordinary course of events; and
 - (b) “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

9 Application of principles of the law of Scotland, construction etc.

- (1) In determining whether an offence under this Part of this Act has been committed the court shall apply the principles of the law of Scotland.
- (2) In interpreting and applying the provisions of the articles mentioned in section 1(4) of this Act the court shall take into account any relevant Elements of Crimes.
- (3) The articles mentioned in section 1(4) of this Act shall for the purposes of this Part of this Act be construed subject to and in accordance with any relevant reservation or declaration certified by Order in Council under section 50(4) of the 2001 Act.
- (4) In interpreting and applying the provisions of sections 5 and 8 of this Act, and the provisions of articles 6, 7, 8.2 and 70.1, the court—
- (a) shall take into account any relevant judgment or decision of the ICC; and

- (b) may take into account any other relevant international jurisprudence.
- (5) Nothing in this Part of this Act shall be read as restricting the operation of any enactment or rule of law relating to—
- (a) the extra-territorial application of offences (including offences under this Part of this Act); or
 - (b) offences ancillary to offences under this Part of this Act (wherever committed).

10 Amendment of Criminal Procedure (Scotland) Act 1995

In section 274(2) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (which specifies the sexual offences in respect of which certain evidence is not admissible)—

- (a) the word “or”, where it occurs immediately after paragraph (g), is repealed; and
- (b) after paragraph (h), there shall be added “; or
 - (j) an offence under section 1 or 2 of the International Criminal Court (Scotland) Act 2001 (asp 13) involving—
 - (i) conduct constituting any of the offences mentioned in paragraphs (a) to (h) above; or
 - (ii) an act committed outwith Scotland which, if committed in Scotland, would constitute any of those offences.”.

PART 2

ASSISTANCE

Introduction

11 Provision of assistance to the ICC

- (1) The powers conferred by this Part of this Act on the Scottish Ministers are exercisable for the purpose of providing assistance to the ICC in relation to investigations or prosecutions where—
- (a) an investigation has been initiated by the ICC; and
 - (b) the investigation and any proceedings arising out of it have not been concluded.
- (2) Where facsimile transmission is used—
- (a) for the making of a request by the ICC or the transmission of any supporting documents; or
 - (b) for the transmission of any document in consequence of such a request,
- this Part of this Act applies as if the documents so sent were the originals of the documents so transmitted; and any such document shall be admissible in evidence accordingly.
- (3) Nothing in this Part of this Act shall be read as preventing the provision of assistance to the ICC otherwise than under this Part.

Forms of assistance

12 Questioning

- (1) This section applies where the Scottish Ministers receive a request from the ICC for assistance in questioning a person being investigated or prosecuted.
- (2) The person concerned shall not be questioned in pursuance of the request unless—
 - (a) the person has been informed of the rights set out in article 55 (rights of persons during an investigation under the Statute of the ICC);
 - (b) the fact that the person has been so informed has been recorded in writing; and
 - (c) the person consents to be interviewed.
- (3) The provisions of article 55 are set out in schedule 3 to this Act.
- (4) Consent for the purposes of subsection (2)(c) above may be given orally or in writing; but if given orally it shall be recorded in writing as soon as is reasonably practicable.

13 Taking or production of evidence

- (1) This section applies where the Scottish Ministers receive a request from the ICC for assistance in the taking or production of evidence.
- (2) The Scottish Ministers may nominate a court in Scotland to receive the evidence to which the request relates.
- (3) For this purpose the nominated court—
 - (a) has the same powers with respect to—
 - (i) securing the attendance of witnesses; and
 - (ii) subject to subsection (5) below, the production of documents or other articles,
as it has for the purpose of other proceedings before the court; and
 - (b) may take evidence on oath.
- (4) Any proceedings under this section shall be conducted in private.
- (5) A person shall not be compelled to give evidence or produce anything in proceedings under this section that, under the Rules of Procedure and Evidence for the time being in force, the person could not be compelled to give or produce in proceedings before the ICC.
- (6) If in order to comply with the request it is necessary for the evidence received by the court to be verified in any manner, the notice nominating the court shall specify the nature of the verification required.
- (7) No order for expenses shall be made in proceedings under this section.
- (8) In subsection (5) above, the reference to the Rules of Procedure and Evidence is a reference to the rules adopted under article 51.

14 Taking or production of evidence: further provisions

- (1) The following provisions apply in relation to proceedings before a nominated court under section 13 of this Act and the evidence received in the proceedings.

- (2) The court shall ensure that a record is kept of the proceedings that indicates, in particular—
 - (a) which persons with an interest in the proceedings were present; and
 - (b) which of those persons were represented and by whom.
- (3) The record shall not be made available to any person except as authorised by the Scottish Ministers or with the leave of the court.
- (4) A copy of the record of the proceedings shall be sent to the Scottish Ministers for transmission to the ICC.

15 Service of process

- (1) This section applies where the Scottish Ministers receive from the ICC a summons or other document together with a request for it to be served on a person in Scotland.
- (2) The Scottish Ministers may direct the chief constable for the area in which the person appears to be to cause the document to be personally served on the person.
- (3) If the document is so served, the chief constable shall forthwith inform the Scottish Ministers of when and how it was served.
- (4) If it does not prove possible to serve the document, the chief constable shall forthwith inform the Scottish Ministers of that fact and the reason.

16 Entry, search and seizure

- (1) Where the Scottish Ministers receive from the ICC a request for assistance which appears to them to require the exercise of a power of entry, search or seizure, they may direct the procurator fiscal to apply to the sheriff for a warrant authorising entry, search and seizure by any constable.
- (2) The sheriff shall have the same power in relation to an application for a warrant under subsection (1) above as the sheriff has in relation to an application for a warrant at common law.
- (3) A warrant granted by virtue of this section may authorise such person as the sheriff considers appropriate to accompany a constable acting in exercise of the warrant; and any such person shall be named in the warrant.

17 Taking of fingerprints etc.

Schedule 4 to this Act (which makes provision with respect to the taking of fingerprints etc. in response to a request from the ICC for assistance in obtaining evidence as to the identity of a person) shall have effect.

18 Provision of records and documents

- (1) This section applies where the Scottish Ministers receive a request from the ICC for the provision of records and documents relating to—
 - (a) the evidence given in any proceedings in Scotland in respect of conduct that would constitute an ICC crime; or

- (b) the results of any investigation of such conduct with a view to such proceedings.
- (2) The Scottish Ministers shall take such steps as appear to them to be appropriate to obtain the records and documents requested; and on their being produced to them they shall transmit them to the ICC.

19 Investigation of proceeds of ICC crime

Where the Scottish Ministers receive a request from the ICC for assistance—

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

the Scottish Ministers may direct such person as they may authorise to apply on behalf of the ICC for an order or warrant under schedule 5 to this Act (which makes provision for production or access orders and the issuing of search warrants).

20 Freezing orders in respect of property liable to forfeiture

Where the Scottish Ministers receive a request from the ICC for assistance in the freezing or seizure of proceeds, property and assets or instrumentalities of crime for the purpose of eventual forfeiture, they may—

- (a) authorise a person to act on behalf of the ICC for the purposes of applying for a freezing order, or applying for the variation or discharge of such an order; and
- (b) direct that person to apply for such an order, or the variation or discharge of such an order, under schedule 6 to this Act (which makes provision for freezing orders in respect of property liable to forfeiture).

Supplementary provisions

21 Verification of material

If in order to comply with a request of the ICC it is necessary for any evidence or other material obtained under this Part of this Act to be verified in any manner, the Scottish Ministers may give directions as to the nature of the verification required.

22 Transmission of material to the ICC

- (1) Any evidence or other material obtained under this Part of this Act by a person other than the Scottish Ministers, together with any requisite verification, shall be sent to the Scottish Ministers for transmission to the ICC.
- (2) Where any evidence or other material is to be transmitted to the ICC, there shall be transmitted—
 - (a) where the material consists of a document, the original or a copy; and
 - (b) where the material consists of any other article, the article itself or a photograph or other description of it,as may be necessary to comply with the request of the ICC.

PART 3

ENFORCEMENT OF SENTENCES AND ORDERS

Sentences of imprisonment

23 Detention in Scotland of certain prisoners

- (1) This section applies where the Scottish Ministers have agreed, in pursuance of section 42(2)(b) of the 2001 Act (duty to issue warrant where the Scottish Ministers agree that a person should be detained in Scotland), that a person on whom a sentence of imprisonment has been imposed (a “prisoner”) should be detained in Scotland.
- (2) The warrant issued by the Scottish Ministers under that section of the 2001 Act shall include provision authorising—
 - (a) the detention of the prisoner in Scotland in accordance with the sentence imposed; and
 - (b) the taking of the prisoner to a specified place where the prisoner is to be detained,(any such warrant being referred to in this section as a “Scottish warrant”).
- (3) The provisions of a Scottish warrant—
 - (a) may be varied by the Scottish Ministers; and
 - (b) shall be so varied to give effect to any variation of the sentence.
- (4) Subject to section 24 of this Act, a prisoner subject to a Scottish warrant shall be treated for all purposes as if the prisoner were subject to a sentence of imprisonment imposed in exercise of its criminal jurisdiction by a court in Scotland.

24 Limited disapplication of certain provisions relating to sentences

The following provisions shall not apply in relation to a person detained in Scotland in pursuance of section 42(2)(b) of the 2001 Act—

- (a) any provision of rules made under section 39 of the Prisons (Scotland) Act 1989 (c. 45) (prison rules) providing for temporary release;
- (b) section 40(2) of that Act of 1989 (deduction of periods unlawfully at large); and
- (c) sections 1, 1A, 2, 3, 9, 10 and 27(7) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) (transfer and release of prisoners).

25 Amendment of Mental Health (Scotland) Act 1984

In section 74(6) of the Mental Health (Scotland) Act 1984 (c. 36) (application, in circumstances where a person is released from a sentence of imprisonment, of provisions relating to transfer directions and restriction directions), at the end there shall be inserted “or otherwise”.

Orders

26 Power to make provision for enforcement of orders

- (1) The Scottish Ministers may make provision by regulations for the enforcement in Scotland of—
 - (a) fines or forfeitures ordered by the ICC; and
 - (b) orders by the ICC against convicted persons specifying reparations to, or in respect of, victims.
- (2) The regulations may authorise the Scottish Ministers—
 - (a) to appoint a person to act on behalf of the ICC for the purposes of enforcing the order; and
 - (b) to give such directions to the appointed person as appear to them necessary.
- (3) The regulations shall provide for the registration of the order by a court in Scotland as a precondition of enforcement.
- (4) An order shall not be so registered unless the court is satisfied that the order is in force and not subject to appeal.
- (5) If the order has been partly complied with, the court shall register the order for enforcement only so far as it has not been complied with.
- (6) The regulations may provide that—
 - (a) for the purposes of enforcement an order so registered has the same force and effect;
 - (b) the same powers are exercisable in relation to its enforcement; and
 - (c) proceedings for its enforcement may be taken in the same way,as if the order were an order of a court in Scotland.
- (7) The regulations may for the purposes mentioned in subsection (6)(a) above apply any enactment relating to the enforcement in Scotland of orders of a court of a country or territory outside the United Kingdom.
- (8) A court shall not exercise its powers of enforcement under the regulations in relation to any property unless it is satisfied—
 - (a) that a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court; and
 - (b) that the exercise of the powers will not prejudice the rights of bona fide third parties.
- (9) The regulations may provide that the reasonable expenses of and incidental to the registration and enforcement of an order are recoverable as if they were sums recoverable under the order.
- (10) Regulations under this section—
 - (a) may make different provision for different kinds of order; and
 - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

PART 4

GENERAL

27 Supplementary provisions relating to the ICC

- (1) Paragraph 5 of Schedule 1 to the 2001 Act (which sets out the circumstances in which orders, judgments, warrants or requests of the ICC are probative) shall apply for the purposes of this Act as it applies for the purposes of that Act.
- (2) Paragraph 6 of that Schedule (which sets out the circumstances in which certificates issued by the ICC, and statements relating to evidence given in proceedings before the ICC, are admissible in proceedings under that Act) shall apply for the purposes of this Act as it applies for the purposes of the 2001 Act but subject to the following modifications—
 - (a) in sub-paragraph (1), references to the 2001 Act shall be construed as references to this Act; and
 - (b) in sub-paragraph (2), the reference to proceedings under Parts 2, 3 and 4 of the 2001 Act shall be construed as a reference to proceedings under Parts 2 and 3 of this Act.

28 Interpretation

- (1) In this Act, unless the context otherwise requires—
 - “the 2001 Act” means the International Criminal Court Act [2001 \(c. 17\)](#);
 - “act” includes an omission, and references to conduct have a corresponding meaning;
 - “crime against humanity” has the meaning given by section 1(4) of this Act;
 - “Elements of Crimes” means the Elements of Crimes set out in regulations made under section 50(3) of the 2001 Act;
 - “evidence” includes documents and other articles;
 - “genocide” has the meaning given by section 1(4) of this Act;
 - “the ICC” means the International Criminal Court established by the Statute of the International Criminal Court, done at Rome on 17th July 1998;
 - “ICC crime” means a crime (other than the crime of aggression) over which the ICC has jurisdiction in accordance with that Statute;
 - “United Kingdom national” means a person who is—
 - (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;
 - (b) a person who under the British Nationality Act [1981 \(c. 61\)](#) is a British subject; or
 - (c) a British protected person within the meaning of that Act;
 - “United Kingdom resident” means a person who is resident in the United Kingdom; and
 - “war crime” has the meaning given by section 1(4) of this Act.
- (2) References in this Act to articles are, unless the context otherwise requires, to articles of the Statute of the International Criminal Court, done at Rome on 17th July 1998.

29 Crown application

This Act binds the Crown and applies to persons in the public service of the Crown, and property held for the purposes of the public service of the Crown, as it applies to other persons and property.

30 Short title and commencement

- (1) This Act may be cited as the International Criminal Court (Scotland) Act 2001.
- (2) The provisions of this Act, other than this section, shall come into force on such day as the Scottish Ministers may by order appoint; and different days may be so appointed for different purposes.
- (3) An order under subsection (2) above shall be made by statutory instrument.