

INTERNATIONAL CRIMINAL COURT (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Background

Part 1 - Offences

Section 2 – Conduct ancillary to genocide etc.

8. This section creates two new offences in relation to conduct which is ancillary to genocide, a crime against humanity or a war crime. First, it makes it an offence for a UK national or a UK resident to engage in conduct outwith Scotland which is ancillary to an offence under section 1, or this section. Second, it criminalises conduct in Scotland, or conduct of a UK national or a UK resident outwith the UK, which is ancillary to an act which if committed in Scotland (or by a UK national or UK resident) would constitute an offence under section 1, or this section, but which being committed (or intended to be committed) outwith the UK by a person who is neither a UK national nor a UK resident does not constitute such an offence. The expression an “ancillary offence” is defined in section 7.
9. Subsections (1) and (2) criminalise conduct outwith Scotland which, if that conduct had been undertaken in Scotland, would have amounted to an “ancillary offence” in relation to a genocide, crime against humanity or war crime. Where any person engages in such ancillary conduct in Scotland that conduct will amount to an offence at common law. Therefore, the offence under subsections (1) and (2) applies only in relation to conduct engaged in outwith Scotland by a UK national or a UK resident. The conduct may be ancillary to either the principal offence or to some other offence which is ancillary to the principal offence. For example, the conduct may be ancillary to a war crime, or ancillary to the incitement of a war crime.
10. The purpose of subsections (3) and (4) is to criminalise conduct in Scotland (or outwith the UK by a UK national or UK resident) which is ancillary to an act which is not an offence under the Act by virtue of such act being committed outwith Scotland by a person who is neither a UK national nor a UK resident. As with an offence under subsections (1) and (2), the conduct may be ancillary to either the principal act or to some other act which is ancillary to the principal act. For example, genocide committed outwith Scotland by a person who is neither a UK national nor a UK resident does not amount to an offence under the Act. However, conduct which is either ancillary to such a genocide or ancillary to an act which is ancillary to that genocide (such as conspiracy to commit genocide) will, if committed in Scotland (or outwith the UK by a UK national or UK resident), be an offence under subsections (3) and (4).