

# INTERNATIONAL CRIMINAL COURT (SCOTLAND) ACT 2001

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## EXPLANATORY NOTES

### THE ACT

#### *Background*

#### **Part 3 – Enforcement of Sentences and Orders**

36. **Part 3** of the Act provides for the enforcement of ICC sentences and orders made following conviction. While a country which has ratified the ICC Statute is obliged to implement orders for fines, forfeitures and reparations that the ICC may make against a convicted person, the same does not apply to accepting prisoners to serve their sentences in domestic prisons. Instead, under article 103.1, a State may indicate to the ICC its willingness to accept ICC prisoners and can attach conditions to its acceptance. Once the ICC hands down a prison sentence and that sentence is no longer subject to appeal, the ICC will designate a State of enforcement among those States which have volunteered and the State shall inform the ICC if it accepts that designation.
37. The UK Government envisages that it will reach an enforcement of sentences agreement with the ICC. The UK Act makes provision for the Secretary of State to accept the UK as the State of enforcement with regard to a specified person. It provides that he or she will consult with the Scottish Ministers if it is considered to be appropriate for the person to serve his or her sentence in Scotland. If the Scottish Ministers agree they will issue a warrant authorising the bringing of the prisoner to Scotland. The prisoner cannot be sent to Scotland without the prior agreement of the Scottish Ministers. The UK Act makes further provision in connection with transfer of the prisoner to the ICC, to another state or to another part of the UK. It also makes provision for custody of the prisoner in transit.

#### **Section 23 – Detention in Scotland of certain prisoners**

38. This section makes provision for the situation where Scottish Ministers have agreed that Scotland should accept a prisoner sentenced by the ICC or certain UN tribunals. The Scottish Ministers are empowered to issue a warrant under the UK Act which will authorise the prisoner to be brought to a named prison in Scotland and detained there. The section makes provision for the warrant to be varied if the prisoner's sentence is varied. In general, the prisoner will be treated in the same way as a domestic prisoner serving a sentence of imprisonment imposed in Scotland for a similar offence.

#### **Section 24 – Limited disapplication of certain provisions relating to sentences**

39. The ICC will be responsible for the sentencing of ICC prisoners. The Statute makes clear that the ICC will determine the sentence after taking into account factors such as time spent in custody on remand and whether multiple offences have been committed. Under article 110.2 the ICC alone has the right to decide any reduction in the sentence it imposes and article 105 states that an ICC sentence of imprisonment shall be binding

on the States Parties, who shall in no case modify it. The provisions in this section therefore disapply those arrangements in Scotland which might otherwise interfere with the power of the ICC to be the sole body responsible for determining the length of detention of the ICC prisoner.

40. The provisions which will be disapplied are any rules made under section 39 of the Prisons (Scotland) Act 1989 providing for temporary release, section 40(2) of the same Act, which relates to periods unlawfully at large and various sections of the Prisoners and Criminal Proceedings (Scotland) Act 1993 relating to transfer and release of prisoners.

#### ***Section 25 – Amendment of Mental Health (Scotland) Act 1984***

41. This provision puts ICC prisoners on the same footing as domestic prisoners by amending subsection (6) of section 74 of the Mental Health (Scotland) Act 1984 so that subsection (7) of that section applies in relation to ICC prisoners. The effect of this is that a prisoner who is released will not remain subject to any transfer or restriction direction which may have been made under the 1984 Act.

#### ***Section 26 – Power to make provision for enforcement of orders***

42. Under articles 77.2 and 70.3, in addition to a sentence of imprisonment, the ICC can impose on a convicted person a fine and order a “forfeiture of proceeds, property and assets derived directly or indirectly from” the crime for which the person has been convicted. Also, under article 75, the ICC may “make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation”.
43. [Section 26](#) empowers the Scottish Ministers to make regulations to enforce such fines, forfeitures or reparations. It is proposed that the procedure will follow that already established in the [Criminal Justice \(International Co-operation\) Act 1990 \(Enforcement of Overseas Forfeiture Orders\) Order 1991 \(S.I. 1991/1463\)](#). The regulations may provide that, on receiving an order, the Scottish Ministers may appoint a person to act on the ICC’s behalf. They will also provide for the registration of the order and may provide for it to be enforced as if it were an order of a domestic court. The regulations may be different for different types of orders.
44. Subsection (8) provides safeguards in respect of persons with an interest or rights in property affected by such an order. This is in keeping with article 109.1, which provides that States Parties shall give effect to fines and forfeitures “without prejudice to the rights of *bona fide* third parties”.