



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- (3) The Genocide Act 1969 (c. 12) is repealed.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.”.