

INTERNATIONAL CRIMINAL COURT ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1: Supplementary Provisions Relating to the Icc

123. [Schedule 1](#), which covers a variety of ICC-related provisions, extends to Scotland.

Paragraph 1: Legal capacity, privileges and immunities

124. This paragraph enables subordinate legislation to be made to confer privileges and immunities on the ICC, the judges and other persons connected with the Court, in accordance with the obligations under Article 48 of the Statute and any other relevant international agreements entered into by the UK. An agreement on the privileges and immunities of the ICC will be adopted at the first meeting of the Assembly of States Parties.

Paragraph 2: Power to provide for sittings of the ICC in the UK

125. Under Article 3, the seat of the ICC shall be in The Hague but the ICC may sit elsewhere, whenever it considers it desirable. This is elaborated in Rule 100 of the draft Rules of Procedure and Evidence which provides that the ICC may sit elsewhere in a particular case where to do so would be in the interests of justice; this is subject to the agreement of the State where the ICC intends to sit. This paragraph enables subordinate legislation to be made to enable the ICC to sit in the UK in the event that it wished to do so.

Paragraph 3: Power to give effect to Rules of Procedure and Evidence

126. The Rules of Procedure and Evidence have been drafted by the Preparatory Commission for the ICC and will be adopted by the first Assembly of States Parties, in accordance with Article 51 of the Statute. This paragraph enables secondary legislation to give effect to any of the Rules if they require implementation in the UK; an example is in section 4(4) (see paragraph 20 above).

Paragraph 4: Parliamentary approval of draft Orders

127. Since the Orders made under paragraphs 1 to 3 will extend to Scotland, this paragraph provides that they shall only be made with the consent of both Houses of Parliament and the Scottish Parliament.

Paragraph 7: Pension provision for UK judges of ICC

128. The purpose of this paragraph is to eliminate a possible disincentive to UK judges standing for election to the ICC. It provides that, in the event that the ICC itself makes no pension provision for judges of that court, the Lord Chancellor (or the Secretary of State) has powers to ensure that a UK judge appointed to the ICC is no worse off for pension purposes than he would have been had he continued to serve in his UK judicial office. The question of whether pension provision will be agreed internationally for ICC

*These notes refer to the International Criminal Court Act
2001 (c.17) which received Royal Assent on 11 May 2001*

judges will not be settled definitely until the first meeting of the Assembly of States Parties.

129. *Sub-paragraph (1)* creates an order making power for the Lord Chancellor (or the Secretary of State in relation to a person holding judicial office in Scotland) in order to secure the pension position of a UK judge sitting on the ICC. *Sub-paragraph (2)* provides that such an order may provide for a judge to remain a member of his existing UK pension scheme (*sub-paragraph (2)(a)*) or that other appropriate arrangements can be made (*sub-paragraph (2)(b)*).
130. *Sub-paragraph (3), (4) and (5)* give additional detail as to what an order made by virtue of *sub-paragraph (2)(a)* may contain. *Sub-paragraph (3)* provides that a judge who remains in his UK pension scheme may do so on the same terms as if he had not been appointed to be a judge of the ICC. By way of securing this outcome, it further provides that the pension benefits payable to him will be based on the salary he would have been entitled to receive for the UK judicial office which he would continue to hold by virtue of section 68 of the Access to Justice Act 1999, were it not for section 68(3) (a) of that Act. *Sub-paragraph (4)* enables the order to provide that the contributions towards dependants' benefits payable under the judicial pension scheme of a judge who remains in a UK pension scheme will continue to be paid by the judge; and that these contributions will be collected under such arrangements as are laid down by the administrators of the scheme. *Sub-paragraph (5)* provides that the order has effect notwithstanding section 68(3)(b) of the Access to Justice Act 1999 (which provides that a seconded judge will not receive pension benefits under a UK judicial pension scheme whilst working for an international court). *Sub-paragraph (5)* also gives the Lord Chancellor power to amend as necessary the provisions of the judicial pensions Acts to give effect to the provisions of this paragraph.
131. *Sub-paragraph (6)* provides for any benefits payable by virtue of an order under *sub-paragraph (2)(b)* to be paid directly from the Consolidated Fund (that is, not from the Departmental Vote) in the same way as other judicial pension benefits.