

INTERNATIONAL CRIMINAL COURT (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Background

Part 2 – Assistance

24. States Parties to the ICC are required to co-operate fully with the ICC in its investigation and prosecution of crimes within its jurisdiction. In particular, article 88 requires States Parties to ensure that there are procedures available under national law for all the forms of co-operation which are specified under Part 9 of the Statute. The main forms of assistance, other than the arrest and surrender of suspects, are outlined in article 93.1.
25. The Act is intended to implement the obligations under articles 88 and 93.1. It will provide, where necessary, a legislative basis for Scottish officials and the justice system to assist the ICC with its investigations or prosecutions.
26. No specific provision is to be made, however, with regard to assistance which can already be provided, and which is laid out in Orders in Council through which the UK implemented the UN Security Council resolutions establishing the International Criminal Tribunals. For example, the Secretary of State is able, without further provision, to respond to ICC requests to protect victims and witnesses or to facilitate the voluntary attendance of expert witnesses, in the same way as is already done with regard to the Tribunals.

Section 11 – Provision of assistance to the ICC

27. This section makes provision for assistance to the ICC with regard to investigations which have been started, including those which may have been deferred or suspended under the arrangements pursuant to articles 18 and 19. Assistance under Part 2 of the Act is not exclusive and does not prevent other types of assistance being rendered to the ICC.

Section 12 – Questioning

28. This section relates to article 93.1(c), which permits the ICC to ask domestic authorities to question a person who the ICC is investigating or prosecuting. In accordance with article 55.2, a person cannot be questioned unless he or she has been informed of his or her rights under article 55, and these rights are reproduced in schedule 3. Subsection (2) provides that the fact that the person has been informed of these rights is to be recorded in writing.

Section 13 – Taking or production of evidence

29. This section applies where the Scottish Ministers receive an ICC request to take evidence on its behalf, including evidence on oath, or to secure the production of

evidence. The Scottish Ministers may nominate a court to receive the evidence in question. The nominated court will have the same powers to secure the attendance of witnesses as it has in domestic cases. Those who attend cannot be compelled to give evidence or produce anything that they could not be compelled to produce under the Rules of Evidence and Procedure adopted under article 51. Proceedings under this section are to be conducted in private.

Section 14 – Taking or production of evidence: further provisions

30. This section provides that a record is to be kept of the proceedings, a copy of which is to be sent to the ICC.

Section 15 – Service of process

31. This section makes provision for the arrangements in article 93.1(d), for assistance to be given in the form of personal service of any document on an individual in Scotland. These can include a summons for a suspect to appear before the ICC, which the ICC Pre-Trial Chamber, under article 58.7, may issue as an alternative to an arrest warrant.

Section 16 – Entry, search and seizure

32. Under article 93.1(g) and (h), the ICC can ask for sites to be examined and searches and seizures to be carried out on its behalf. This section provides that, where the Scottish Ministers believe implementation of a request requires the exercise of powers of entry, search and seizure, they may make arrangements for the procurator fiscal to apply for a warrant which will grant the necessary powers to a constable. This would be done in line with a court's powers to grant a warrant at common law.

Section 17 – Taking of fingerprints etc.

33. The purpose of this section and schedule 4 is to enable the implementation of an ICC request, made under article 93.1(a), to locate and identify an individual in whom the ICC has an interest. The relevant domestic definition in schedule 4 in this context is taken from the Criminal Procedure (Scotland) Act 1995; and the definition of "sample" set out in paragraph 1(3) is also based on the meaning given by that Act.

Section 18 – Provision of records and documents

34. The ICC may request that a State Party provide records and documents, including official records and documents, pursuant to article 93.1(i). Such a request would normally be able to be met without specific provision or under the powers in sections 13 and 17. This section is intended to ensure that the request can also be met in the particular case where the ICC is requesting information about previous domestic proceedings or investigations in respect of conduct which would constitute an ICC crime.

Section 19 – Investigation of proceeds of ICC crime

Section 20 – Freezing orders in respect of property liable to forfeiture

35. These sections together make provision for providing assistance requested under article 93.1(k). This article provides that the ICC may request assistance in the identification, tracing and freezing or seizure of proceeds, property and assets and instruments of crimes, for the purpose of eventual forfeiture. Where the ICC requests assistance in determining whether a person has benefited from an ICC crime, or in identifying property derived from such a crime, section 19 provides that the Scottish Ministers may arrange for an order or warrant to be issued under schedule 5. Where the ICC requests assistance in the freezing or seizure of property for possible forfeiture, section 20 provides that the Scottish Ministers may make arrangements for a freezing order under schedule 6.