

INTERNATIONAL CRIMINAL COURT (SCOTLAND) ACT

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

Background

3. The Act, in tandem with the International Criminal Court Act 2001 (“the UK Act”), will enable the United Kingdom to ratify the Statute of the International Criminal Court, which was adopted on 17 July 1998 at Rome. The UK Government signed the Statute on 30 November 1998 and legislation is required to allow the UK to comply with all its obligations under the Statute and accordingly to ratify.
4. In these notes the “ICC” means the International Criminal Court established by the Statute of the International Criminal Court done at Rome on 17 July 1998; “ICC Statute” means that Statute; references to articles are to articles of that Statute; “ICC crimes” means war crimes, crimes against humanity and genocide, which are defined in articles 6 to 8 of the ICC Statute; and “ICC prisoner” means a person sentenced by the ICC to a term in prison for committing an ICC crime.
5. The Act is in four Parts, with six schedules, as follows—
 - Part 1 – (Offences) incorporates into domestic law the offences of genocide, crimes against humanity and war crimes, and offences against the administration of justice of the ICC.
 - Part 2 – (Assistance) provides for various forms of co-operation with ICC investigations.
 - Part 3 – (Enforcement of sentences and orders) makes provision in relation to prisoners convicted by the ICC or certain UN tribunals who, by virtue of warrants issued by the

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Scottish Ministers under the UK Act, are serving their sentences in Scotland; and also confers power to make subordinate legislation for the enforcement of fines, forfeitures and reparations ordered by the ICC or the UN tribunals.

- Part 4 – (General) defines certain expressions used in the Act; makes provision for proof of orders, judgements, warrants or requests of the ICC and evidence about ICC proceedings. It also makes provision for commencement.
- Schedule 1 – (Genocide, crimes against humanity and war crimes) reproduces articles 6 to 9, which define those crimes.
- Schedule 2 – (Offences against the administration of justice) reproduces article 70, which defines offences against the administration of justice in relation to the ICC.
- Schedule 3 – (Rights of persons during investigation) reproduces article 55, which describes those rights.
- Schedule 4 – (Taking of fingerprints etc.) describes the arrangements for taking such evidence in response to an ICC request for assistance in identifying a person.
- Schedule 5 – (Investigation of proceeds of ICC crime) describes the arrangements for co-operating with ICC investigations into the proceeds of crime.
- Schedule 6 – (Freezing orders in respect of property liable to forfeiture) describes the arrangements for complying with an ICC request to freeze property for the purpose of eventual forfeiture.

PART 1 - OFFENCES

6. Part 1 incorporates the offences in the ICC Statute into domestic law. This is not an obligation under the ICC Statute, except in respect of offences against the administration of justice in relation to the ICC. Under the principle of “complementarity” it is intended that individual countries should prosecute ICC crimes domestically and the ICC will intervene only where states are genuinely unable or unwilling to take action.

Section 1 – Genocide, crimes against humanity and war crimes

7. This section makes it an offence under Scots law to commit genocide, crimes against humanity and war crimes where the act is committed in Scotland or outwith the UK by a UK national or a UK resident. The crimes are defined in articles 6, 7 and 8.2 of the ICC Statute, which are reproduced in schedule 1. The crime of genocide is already an offence in domestic law by virtue of the Genocide Act 1969. However, jurisdiction under that Act is more limited than is provided for in the Act. Accordingly, that Act is repealed.

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).

Section 3 – Trial and punishment of main offences

11. This section makes provision in connection with the prosecution and sentencing of offences under sections 1 and 2 of the Act and offences ancillary to such offences. Subsection (2) provides that these offences must be tried in solemn proceedings, which means that the accused will be tried on indictment before a sheriff, or a judge of the High Court of Justiciary, with a jury of fifteen, whose verdict of guilty must be reached by at least eight votes. Subsection (3) provides that the prosecution of offences committed outwith Scotland may take place anywhere in Scotland. Sentencing of those found guilty of murder, as defined in subsection (6), or an offence ancillary to murder, will be in line with the domestic penalty for murder or relevant ancillary offence in relation to murder. For other offences, sentences of up to 30 years will be available.

Section 4 – Offences in relation to the ICC

12. This section provides that any person who commits an act against the administration of justice in relation to the ICC will be prosecuted as for the equivalent domestic offence. The

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relevant domestic offences are set out in subsection (2). Many of these are offences at common law, such as attempting to pervert or defeat the ends of justice. Subsection (4) provides that offences committed outwith the UK may be tried anywhere in Scotland.

Section 5 – Responsibility of military commanders and other superiors

13. This section makes provision for military commanders and other superiors to be held criminally responsible for the acts of their subordinates. The provision is based on article 28 of the ICC Statute. The wording draws a distinction between the standard expected of military and quasi-military commanders in relation to military forces under their command and other superior/subordinate relationships, such as those applying to government officials or heads of civilian organisations, as it is recognised that the latter may not have the same degree of control over the actions of their subordinates. It is well established in international law that superiors can be subject to investigation and prosecution with regard to war crimes etc. This concept stretches back as far as the Nuremburg and Tokyo Tribunals and has also been incorporated into the provisions of the Tribunals dealing with the former Yugoslavia and Rwanda. This section would permit such cases to be investigated and prosecuted in domestic courts in circumstances where the ICC might find a case on that basis.

14. Subsections (4) and (5) make it clear that liability under this provision is liability on an art and part basis (i.e. in the capacity of accessory or accomplice in relation to a criminal act), and does not preclude any other liability that the commander or superior may have, for example where the commander has in fact ordered the commission of the offences.

Section 6 – Proceedings against persons becoming resident in the United Kingdom

15. This section provides that a person who is neither a UK national nor a UK resident at the time when he or she commits an offence under Part 1 of the Act, or an offence which is ancillary to an offence under that Part, outwith the UK, may be prosecuted for that offence in Scotland if he or she subsequently becomes a UK resident. Proceedings may be brought against the person only where the offence is committed after the Act comes into effect.

Section 7 – Meaning of “ancillary offence”

16. This section defines ancillary offences for the purposes of Part 1 of the Act. They reflect the forms of secondary liability in article 25.3, but are defined in terms of the equivalent offences in Scots law.

Section 8 – Mental element

17. This section provides, in line with article 30 of the ICC Statute, that unless otherwise provided, the necessary mental element of an offence is present if the material elements of ICC crime or an offence against the administration of justice are committed with “intent” and “knowledge”. “Intent” and “knowledge” are explained in subsection (3).

18. In accordance with article 30, subsection (2) provides that this general rule shall not apply where an alternative mental element is specified in certain provisions of the ICC Statute, certain

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provisions of the Act or in any of the relevant Elements of Crimes. An example is to be found in the finalised draft of the Elements of Crimes in respect of article 8(2)(b)(xxvi) (conscripting or enlisting children), where it is required that the perpetrator “knew or should have known” the age of the child concerned.

Section 9 – Application of the principles of the law of Scotland, construction etc.

19. This section explains how the courts are to interpret and apply the ICC Statute. Subsection (1) provides that the domestic courts will apply the principles of the law of Scotland in trying offences under Part 1 of the Act.

20. The courts must take into account the Elements of Crimes when interpreting and applying articles 6, 7 and 8.2. The Elements of Crimes will be adopted by the ICC when it is established, but are likely to be similar to those adopted by the Preparatory Commission for the ICC on 30 June 2000. When they have been adopted the UK Act provides that the text will be set out in regulations which will be made by statutory instrument. These articles must also be construed subject to and in accordance with any reservations or declarations made by the UK Government and certified by Order in Council made under the UK Act.

21. In interpreting and applying the provisions of the articles referred to in paragraph 21 above, and also article 70.1 (and sections 5 and 8 of this Act), the courts are required to take into account any relevant jurisprudence of the ICC. They may also take into account any other relevant international jurisprudence (for example, that of the International Criminal Tribunals).

22. Finally, subsection (5) preserves existing enactments and rules in respect of the extraterritorial application of offences and in respect of offences ancillary to offences under Part 1 of the Act. For example, the provision for extraterritorial jurisdiction over grave breaches of the Geneva Convention Act 1957 is unaffected.

Section 10 – Amendment of Criminal Procedure (Scotland) Act 1995

23. This section pertains to the protection of victims and witnesses. Victims and witnesses will be entitled to the same protection as in domestic law and the safeguards provided in sections 50, 92, 271 and 274 of the Criminal Procedure (Scotland) Act 1995 will apply. However, it is considered necessary to extend the restrictions on evidence relating to sexual offences which is not admissible, to offences under sections 1 and 2 of the Act which involve a sexual offence, and this amendment of the 1995 Act has that effect.

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.

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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.

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

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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”.

PART 4 – GENERAL

Section 27 – Supplementary provisions relating to the ICC

45. This section applies the terms of paragraphs 5 and 6 of Schedule 1 to the UK Act. Paragraph 5 provides that documents which purport to be issued by the ICC are to be treated as authentic and therefore do not require further proof. Paragraph 6 explains that a certificate purporting to be issued by the ICC regarding certain aspects of ICC proceedings, and statements relating to evidence given in such proceedings, are admissible as evidence of those proceedings, and no further proof is required.

Section 28 – Interpretation

46. Crimes of aggression are not included within the definition of an “ICC crime”. This is because, under article 5 of the ICC Statute, the ICC will exercise its jurisdiction over the crime of aggression only when agreement has been reached on a definition of that crime and the conditions under which the jurisdiction will be exercised. Agreement has yet to be reached and would in any case require an amendment of the ICC Statute. The earliest such an amendment could be adopted is seven years after the coming into force of the Statute.

**SCHEDULE 1 – GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES:
ARTICLES 6 TO 9**

46. This schedule reproduces articles 6 to 9 of the ICC Statute, with the exception of three provisions in article 8 (war crimes): articles 8.1, 8.2(b)(xx) and article 8.3. Articles 8.1 and 8.3 are not relevant to the definition of war crimes in article 8.2. Article 8.2(b)(xx) will only become

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operative if the ICC Statute is amended and the earliest such an amendment could be adopted is seven years after the entry into force of the Statute.

SCHEDULE 4 – TAKING OF FINGERPRINTS ETC.

47. Under article 93.1(a), the ICC can ask a State Party for assistance in identifying an individual in whom it has an interest. Schedule 4 is intended to enable the taking of evidence necessary for identification where alternative means of responding to such an ICC request have been exhausted.

48. Where the Scottish Ministers receive an ICC request to identify an individual, paragraph 1 provides that other means of identification must be tried first. If they prove inconclusive, the Scottish Ministers would inform the ICC. If the ICC nonetheless wishes to proceed with the request, the Scottish Ministers may nominate a court which may order the taking by a constable of the evidence necessary for identification, such as fingerprints or a sample of hair. The court may order the person to attend a police station to provide the specified evidence and if he or she fails to comply, the court may order his or her arrest for this purpose and the evidence may be taken without consent.

49. Paragraph 7 applies the relevant parts of the Criminal Procedure (Scotland) Act 1995 with regard to the destruction of fingerprints or samples.

SCHEDULE 5 – INVESTIGATION OF PROCEEDS OF ICC CRIME

50. Schedule 5 applies where the ICC has made a request for assistance in ascertaining whether a person has benefited from an ICC crime, or in identifying property derived from an ICC crime, and the Scottish Ministers have directed an authorised person to apply for an order or warrant under section 19.

Part 1 – Production or access orders

51. Part 1 sets out the provisions which govern the making of court orders or warrants for the production of, or access to, material. Paragraph 2 sets out the grounds upon which the court may make an order under this Part.

52. Paragraph 3 provides that a standard production or access order will require a named individual either to produce the specified material or material of a specified description to a constable (production order) or to give the constable access to this material (access order). The material should be produced within a specified period, normally 7 days, although this can be shortened or lengthened by the court.

53. Paragraph 4 provides that a special production or access order may be made in relation to a person if the sheriff thinks it is likely that the person will have relevant material in his or her possession within 28 days. Such an order will require a named individual to notify a named constable when the information comes into his or her possession. This provision will allow for information that will in the future come into a person's possession (or come into existence) to be obtained quickly. It is substantially based on Schedule 5 to the Terrorism Act 2000.

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54. Part 1 of the schedule contains further provision concerning the procedure in relation to orders (paragraph 5) and the effect of such orders (paragraph 6).

Part 2 – Search Warrants

55. This Part sets out the provisions governing the issue of a search warrant upon an application to the court by a person authorised to do so under section 19. Paragraph 10 sets out the circumstances in which such a warrant may be issued. These are, if it appears that a production or access order has not been complied with; where there are grounds for making a production or access order and, for example, it is not practicable to communicate with those who may be able to grant access; and in circumstances where more general material relating to an ICC crime is sought, when this material is likely to be of substantial value to the investigation.

SCHEDULE 6 – FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

56. If the ICC makes a request the Scottish Ministers may direct a person to make an application to the court for a freezing order. Schedule 6, which relates to section 20, sets out the procedures for the making, variation and discharge of freezing orders. It also provides a power to appoint a receiver, seize property to prevent its removal from Scotland and defines the interaction of freezing orders with existing legislation.

57. The court must make a freezing order if it is satisfied that the ICC has made a forfeiture order or has reasonable grounds for believing that a forfeiture order may be made (paragraph 2).

58. The effect of a freezing order is described in paragraph 3. Its purpose is to prohibit anyone from dealing with the property specified in the order, except by methods and under conditions defined in the order itself. This paragraph also provides that anybody affected by a freezing order will be notified. Paragraph 4 allows for the variation or discharge of the order in pursuance of a direction given by the Scottish Ministers or on the application of a person affected by it. The order is to be discharged on conclusion of the relevant ICC proceedings.

59. Paragraph 5 provides for the court to appoint a receiver when a freezing order is in force. The receiver would take possession of the specified property and manage it in accordance with the directions of the court. The schedule also provides that where a freezing order is in force a constable may seize property specified in the order to prevent its removal from Scotland (paragraph 7).

60. Paragraph 6 provides that where a freezing order relates to heritable property, an application can be made for a warrant for inhibition. The court may grant a warrant for inhibition against any person in relation to that property. The Scottish Ministers may register the warrant in the Register of Inhibitions and Adjudications. The paragraph makes further provision regarding the operation of the inhibition and its recall.

61. The schedule then goes on to detail at paragraphs 8 to 10 how freezing orders will be enforced when the order relates to a person whose estate is sequestrated, or a company in respect of which a liquidator or floating charge receiver is appointed. The effect of a freezing order being in

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place at the time of their appointment is to prevent the trustee in bankruptcy, liquidator or floating charge receiver from exercising functions in relation to assets affected by the order. Paragraph 11 provides protection for insolvency practitioners when they seize or dispose of property which is subject to a freezing order.

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