



# International Criminal Court Act 2001

## 2001 CHAPTER 17

### PART 4

#### ENFORCEMENT OF SENTENCES AND ORDERS

##### *Sentences of imprisonment*

#### **42 Detention in the United Kingdom in pursuance of ICC sentence**

- (1) This section applies where—
  - (a) the United Kingdom is designated by the ICC as the state in which a person (“the prisoner”) is to serve a sentence of imprisonment imposed by the ICC, and
  - (b) the Secretary of State informs the ICC that the designation is accepted.
- (2) Where the Secretary of State is minded that the prisoner should be detained in Scotland—
  - (a) he shall consult the Scottish Ministers, and
  - (b) if the Scottish Ministers agree that the prisoner should be detained in Scotland, they shall issue a warrant authorising the bringing of the prisoner to Scotland.
- (3) Where subsection (2) does not apply or the Scottish Ministers do not agree, the Secretary of State shall issue a warrant authorising—
  - (a) the bringing of the prisoner to England and Wales or Northern Ireland,
  - (b) the detention of the prisoner there in accordance with the sentence of the ICC, and
  - (c) the taking of the prisoner to a specified place where he is to be detained.

The provisions of the warrant may be varied by the Secretary of State, and shall be so varied to give effect to any variation of the ICC’s sentence.

- (4) A prisoner subject to a warrant authorising his detention in England and Wales or Northern Ireland shall be treated for all purposes, subject to subsection (5) and Schedule 7, as if he were subject to a sentence of imprisonment imposed in exercise

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of its criminal jurisdiction by a court in the part of the United Kingdom in which he is to be detained.

- (5) The following enactments do not apply to a person detained in pursuance of a sentence of the ICC—
- (a) the Repatriation of Prisoners Act 1984 (c. 47),
  - (b) Schedule 1 to the Crime (Sentences) Act 1997 (c. 43) (transfer of prisoners within the British Islands).

As to transfer of such a person within the United Kingdom, see sections 44 and 45 below.

- (6) Schedule 7 excludes the operation of certain statutory provisions in relation to a person detained in England and Wales or Northern Ireland in pursuance of a sentence of the ICC.

**Modifications etc. (not altering text)**

- C1** S. 42 applied (with modifications) (E.W.) (15.8.2007) by [The International Tribunals \(Sierra Leone\) \(Application of Provisions\) Order 2007 \(S.I. 2007/2140\)](#), **art. 2**
- C2** Ss. 42-48 applied (with modifications) (8.3.2018) by [The United Nations \(International Residual Mechanism for Criminal Tribunals\) Order 2018 \(S.I. 2018/187\)](#), arts. 1(1), **33(3)** (with art. 3)
- C3** S. 42(5) extended (IoM) (1.4.2004) by [S.I. 2004/714](#), **art. 2(b)**

**43 Temporary return or transfer of custody to another state**

- (1) This section applies where the Secretary of State receives a request from the ICC—
- (a) for the temporary return of the prisoner to the custody of the ICC for the purposes of any proceedings, or
  - (b) for the transfer of the prisoner to the custody of another state in pursuance of a change in designation of state of enforcement.
- (2) If the prisoner is detained in Scotland, the Secretary of State shall transmit the request to the Scottish Ministers.
- (3) The relevant Minister shall—
- (a) issue a warrant authorising the prisoner’s temporary return or transfer in accordance with the request,
  - (b) make the necessary arrangements with the ICC or, as the case may be, the other state, and
  - (c) give such directions as to the custody, surrender and (where appropriate) return of the prisoner as appear to him appropriate to give effect to the arrangements.
- (4) Where the prisoner is temporarily returned to the custody of the ICC, the warrant authorising his detention in any part of the United Kingdom shall continue to have effect so as to apply to him again on his return.
- (5) In this section “the relevant Minister” means—
- (a) in relation to a person detained in England and Wales or Northern Ireland, the Secretary of State, and
  - (b) in relation to a person detained in Scotland, the Scottish Ministers.

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**Modifications etc. (not altering text)**

- C2** Ss. 42-48 applied (with modifications) (8.3.2018) by [The United Nations \(International Residual Mechanism for Criminal Tribunals\) Order 2018 \(S.I. 2018/187\)](#), arts. 1(1), **33(3)** (with art. 3)
- C4** S. 43 applied (with modifications) (E.W.) (15.8.2007) by [The International Tribunals \(Sierra Leone\) \(Application of Provisions\) Order 2007 \(S.I. 2007/2140\)](#), **art. 2**

**44 Transfer to another part of the United Kingdom: transfer of ICC sentence**

- (1) The relevant Minister may make an order for the transfer of the prisoner to another part of the United Kingdom to serve the whole or part of the remainder of the ICC sentence there.
- (2) No such order shall be made—
- (a) for the transfer of the prisoner to Scotland without the agreement of the Scottish Ministers, or
- (b) for the transfer of the prisoner from Scotland without the agreement of the Secretary of State.
- (3) An order under this section shall be subject to such conditions (if any) as the relevant Minister may impose from time to time.
- (4) If an order is made under this section the warrant authorising the prisoner’s detention in the part of the United Kingdom from which he is transferred—
- (a) shall continue to have effect, and
- (b) shall have effect as if it were a warrant authorising his detention in the part of the United Kingdom to which he is transferred.
- (5) A prisoner transferred under this section to England and Wales or Northern Ireland shall be treated for all purposes, subject as mentioned in section 42(4), as if he were serving a sentence of imprisonment imposed in exercise of its criminal jurisdiction by a court in the part of the United Kingdom to which he is transferred.
- (6) In this section “the relevant Minister” means—
- (a) in relation to a person detained in England and Wales or Northern Ireland, the Secretary of State, and
- (b) in relation to a person detained in Scotland, the Scottish Ministers.

**Modifications etc. (not altering text)**

- C2** Ss. 42-48 applied (with modifications) (8.3.2018) by [The United Nations \(International Residual Mechanism for Criminal Tribunals\) Order 2018 \(S.I. 2018/187\)](#), arts. 1(1), **33(3)** (with art. 3)
- C5** S. 44 extended (with modifications) (IoM) (1.4.2004) by [S.I. 2004/714](#), **art. 2(e)**, **Sch.**
- C6** S. 44 applied (with modifications) (E.W.) (15.8.2007) by [The International Tribunals \(Sierra Leone\) \(Application of Provisions\) Order 2007 \(S.I. 2007/2140\)](#), **art. 2**
- C7** S. 44 extended (Jersey) (with modifications) (8.10.2014 coming into force in accordance with art. 1) by [The International Criminal Court Act 2001 \(Jersey\) Order 2014 \(S.I. 2014/2706\)](#), arts. 1, 2(b), **Sch.**
- C8** S. 44 extended (with modifications) (Guernsey) (coming into force in accordance with art. 1 of the amending S.I.) by [The International Criminal Court Act 2001 \(Guernsey\) Order 2022 \(S.I. 2022/865\)](#), art. 2(1)(b), **Sch.**

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#### 45 **Transfer to another part of the United Kingdom: transfer for temporary purposes**

- (1) This section applies where it appears to the relevant Minister—
- (a) that the prisoner should be transferred to another part of the United Kingdom for the purpose of attending criminal proceedings against him there, or
  - (b) that the attendance of the prisoner at a place in another part of the United Kingdom is desirable in the interests of justice, or for the purposes of any public inquiry.
- (2) The relevant Minister may make an order for the transfer of the prisoner to that part of the United Kingdom.
- (3) No such order shall be made—
- (a) for the transfer of the prisoner to Scotland without the agreement of the Scottish Ministers, or
  - (b) for the transfer of the prisoner from Scotland without the agreement of the Secretary of State.
- (4) An order under this section shall be subject to such conditions (if any) as the relevant Minister thinks fit to impose.
- Any such conditions may be varied or removed at any time.
- (5) Where an order is made under this section—
- (a) the warrant authorising the prisoner’s detention in the part of the United Kingdom from which he is transferred shall continue to have effect, and
  - (b) he shall be returned to that part of the United Kingdom when the purposes for which the order is made are fulfilled.
- (6) In this section “the relevant Minister” means—
- (a) in relation to a person detained in England and Wales or Northern Ireland, the Secretary of State, and
  - (b) in relation to a person detained in Scotland, the Scottish Ministers.

##### **Modifications etc. (not altering text)**

- C2** Ss. 42-48 applied (with modifications) (8.3.2018) by [The United Nations \(International Residual Mechanism for Criminal Tribunals\) Order 2018 \(S.I. 2018/187\)](#), arts. 1(1), **33(3)** (with art. 3)
- C9** S. 45 extended (with modifications) (IoM) (1.4.2004) by [S.I. 2004/714](#), **art. 2(c)**, (Sch. )
- C10** S. 45 applied (with modifications) (E.W.) (15.8.2007) by [The International Tribunals \(Sierra Leone\) \(Application of Provisions\) Order 2007 \(S.I. 2007/2140\)](#), **art. 2**
- C11** S. 45 extended (Jersey) (with modifications) (8.10.2014 coming into force in accordance with art. 1) by [The International Criminal Court Act 2001 \(Jersey\) Order 2014 \(S.I. 2014/2706\)](#), arts. 1, 2(b), **Sch.**
- C12** S. 45 extended (with modifications) (Guernsey) (coming into force in accordance with art. 1 of the amending S.I.) by [The International Criminal Court Act 2001 \(Guernsey\) Order 2022 \(S.I. 2022/865\)](#), art. 2(1)(b), **Sch.**

#### 46 **Domestic sentence current at end of term of ICC sentence**

- (1) Where a person who completes a term of imprisonment imposed by the ICC—
- (a) is still subject to a domestic sentence of imprisonment, whether imposed before or during his imprisonment in pursuance of the sentence of the ICC, and

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(b) has been transferred to another part of the United Kingdom under section 44 or 45,

he shall be treated as if he had been transferred from the part of the United Kingdom in which the domestic sentence was imposed, by order under Schedule 1 to the Crime (Sentences) Act 1997 (c. 43), on a restricted transfer subject to such conditions as the relevant Minister may consider appropriate.

(2) In subsection (1)—

(a) a “domestic sentence” means a sentence imposed by a court in the United Kingdom, and

(b) “the relevant Minister” means—

(i) where the domestic sentence was imposed in England and Wales or Northern Ireland, the Secretary of State, and

(ii) where the domestic sentence was imposed in Scotland, the Scottish Ministers.

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**C2** Ss. 42-48 applied (with modifications) (8.3.2018) by [The United Nations \(International Residual Mechanism for Criminal Tribunals\) Order 2018 \(S.I. 2018/187\)](#), arts. 1(1), **33(3)** (with art. 3)

**C13** S. 46 applied (with modifications) (E.W.) (15.8.2007) by [The International Tribunals \(Sierra Leone\) \(Application of Provisions\) Order 2007 \(S.I. 2007/2140\)](#), **art. 2**

**47 Custody of prisoner in transit, &c**

(1) The following provisions of this section apply in relation to times when the prisoner is subject to a warrant under any provision of this Part, or any corresponding provision of an Act of the Scottish Parliament, but is not in legal custody under the Prison Act 1952 (c. 52), the Prisons (Scotland) Act 1989 (c. 45) or the Prison Act (Northern Ireland) 1953 (c.18(N.I)).

(2) The prisoner shall be deemed to be in the legal custody of the relevant Minister at any time when, being—

(a) in the United Kingdom, or

(b) on board a British ship, a British aircraft or a British hovercraft,

he is being taken to or from any place or is being kept in custody.

(3) The relevant Minister may, from time to time, designate a person as a person who is for the time being authorised to take the prisoner to or from any place or to keep the prisoner in custody.

(4) A person so authorised has all the powers, authority, protection and privileges—

(a) of a constable in the part of the United Kingdom in which that person is for the time being, or

(b) if he is outside the United Kingdom, of a constable in the part of the United Kingdom to or from which the prisoner is to be taken.

(5) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a constable and taken to any place to which he may be taken under the warrant referred to in subsection (1).

In this subsection “constable”, in relation to any part of the United Kingdom, means—

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- (a) a person who is a constable in that or any other part of the United Kingdom, or
  - (b) a person who, at the place in question, has under any enactment (including subsection (4)) the powers of a constable in that or any other part of the United Kingdom.
- (6) In this section “the relevant Minister” means—
- (a) in relation to a person who is, or is to be, detained in England and Wales or Northern Ireland, the Secretary of State, and
  - (b) in relation to a person who is, or is to be, detained in Scotland, the Scottish Ministers.

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**Modifications etc. (not altering text)**

- C2** Ss. 42-48 applied (with modifications) (8.3.2018) by [The United Nations \(International Residual Mechanism for Criminal Tribunals\) Order 2018 \(S.I. 2018/187\)](#), arts. 1(1), **33(3)** (with art. 3)
- C14** S. 47 applied (with modifications) (E.W.) (15.8.2007) by [The International Tribunals \(Sierra Leone\) \(Application of Provisions\) Order 2007 \(S.I. 2007/2140\)](#), **art. 2**

**48 Interpretation of ss. 42 to 47**

- (1) Any reference in sections 42 to 47 to a person being detained in a part of the United Kingdom is to his being subject to a warrant authorising his detention there.
- (2) References to such a warrant include, unless the context otherwise requires, a warrant issued under an Act of the Scottish Parliament authorising his detention in Scotland.

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**Modifications etc. (not altering text)**

- C2** Ss. 42-48 applied (with modifications) (8.3.2018) by [The United Nations \(International Residual Mechanism for Criminal Tribunals\) Order 2018 \(S.I. 2018/187\)](#), arts. 1(1), **33(3)** (with art. 3)
- C15** S. 48 applied (with modifications) (E.W.) (15.8.2007) by [The International Tribunals \(Sierra Leone\) \(Application of Provisions\) Order 2007 \(S.I. 2007/2140\)](#), **art. 2**

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