

INTERNATIONAL CRIMINAL COURT ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Extradition Proceedings

137. Article 90 of the Statute sets out in detail what a State Party is to do if it receives a request from the ICC for the surrender of a person and also receives a request from a State for that person's extradition, whether or not the extradition request relates to the same conduct which the ICC is investigating. In summary, the State Party must give priority to the ICC request unless the country requesting extradition is a non-Party and the requested State is under an existing international obligation to extradite the person to that non-Party. In that exceptional case, Article 90 says that the State Party shall decide whether to surrender the person to the ICC or extradite him to the requesting State after considering all relevant factors, including those stipulated in Articles 90.6 or, as the case may be, 90.7(b).
138. [Paragraph 8](#) is intended to implement Article 90 in England and Wales and Northern Ireland; paragraph 9 makes equivalent provision for Scotland. Under paragraph 8, if the ICC requests the arrest and surrender of a person already subject to extradition proceedings, the Secretary of State will notify the court hearing the extradition proceedings of the request. That court will, if necessary, adjourn its proceedings so that proceedings under Part 2 of this Act can take place to determine whether the person should be delivered up. If a delivery order is made and the extradition proceedings are still pending or in progress, the Secretary of State is obliged to consult the ICC. Depending on the outcome of those consultations, the Secretary of State may direct that the extradition proceedings be discontinued and the delivery order be executed. The discontinuance of the extradition proceedings is without prejudice to the possible institution of fresh extradition proceedings at a later date.