

INTERNATIONAL CRIMINAL COURT ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Enforcement of Sentences and Orders

71. Whereas Part 3 provides for implementation of ICC requests during investigations and proceedings, Part 4 provides for the enforcement of ICC sentences and orders made following conviction. The sentences and orders are of two different types. A State Party is obliged to implement orders for fines, forfeitures and reparations that the ICC may make against a convicted person. However, a State Party is not obliged to accept persons convicted by the ICC (“ICC prisoners”) to serve their sentences in its 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 longer subject to appeal, the ICC will designate a State of enforcement among those States who have volunteered and the State shall inform the ICC if it accepts that designation.
72. The Government envisages reaching an enforcement of sentences agreement with the ICC. This Part sets out the provisions which would apply where the Secretary of State has agreed to an ICC request that a prisoner serve his sentence in the UK. With the exception of section 49 (relating to other orders), Part 4 extends to Scotland.

Section 42: Detention in the United Kingdom in pursuance of ICC sentence

73. This section applies where the Secretary of State has accepted the designation by the ICC of the UK as the State of enforcement with regard to a specific person. Under *subsection (2)* he will consult with the Scottish Ministers if he considers it may be appropriate for the person to serve his sentence in Scotland. The relevant Minister – the Secretary of State or, in Scotland, the Scottish Ministers – will then issue a warrant authorising the person to be brought to the relevant part of the UK. The Secretary of State’s warrant will authorise the detention of the prisoner in England, Wales or Northern Ireland. The International Criminal Court (Scotland) Bill introduced in the Scottish Parliament on 4 April 2001 provides that the warrant issued by the Scottish Ministers under this section will authorise the detention of the prisoner in Scotland.
74. *Subsection (4)* provides that where the prisoner is detained in England, Wales or Northern Ireland, he shall be treated in the same way as a domestic prisoner serving a sentence of imprisonment imposed by a court in that part of the UK for a similar offence. The conditions of the ICC prisoner’s detention are to be the same as those for domestic prisoners, except that, by virtue of Schedule 7, the domestic provisions concerned with the early release of prisoners or which affect the length of sentence are disapplied. Articles 105 and 110 of the Statute make clear that consideration of early release or reduction in sentence will be a matter for the ICC alone. If the ICC itself subsequently amends the sentence imposed on the person, *subsection (3)* enables the domestic warrant to be amended accordingly.
75. *Subsection (5)* disapplies the provisions of the Repatriation of Prisoners Act 1984 to ICC prisoners, as the transfer of ICC prisoners between States is to be determined by

the ICC under Article 104. The subsection also disapplies Schedule 1 to the Crime (Sentences) Act 1997 because sections 44 and 45 make separate provision for the transfer of prisoners between different parts of the UK (but see section 46).

Section 43: Temporary return or transfer of custody to another state

76. This section enables the temporary transfer of an ICC prisoner to and from the ICC, for example, to testify at another trial (as provided for in Rule 193 of the finalized draft Rules of Procedure and Evidence). It also enables the transfer of custody to any other State to which the ICC, under its power in Article 104, may decide to transfer the prisoner. The Secretary of State or, if the prisoner is being detained in Scotland, the Scottish Ministers will make the necessary arrangements.

Sections 44 and 45: Transfer to another part of the UK

77. **Section 44** enables the transfer of a prisoner from one part of the UK to another to serve the remainder of the ICC sentence. The warrant under which he is being detained will continue to have effect. **Section 45** provides for the temporary transfer of the prisoner in custody between UK jurisdictions, including Scotland, for example, for the purpose of attending criminal proceedings against him or for testifying at another trial. Under both sections, transfer between Scotland and the rest of the UK requires the prior agreement of the relevant Minister in the receiving part of the UK.

Section 46: Domestic sentence current at end of term of ICC sentence

78. This section makes provision in respect of prisoners who have completed a term of imprisonment imposed by the ICC but who are still subject to an ordinary domestic sentence (including a sentence imposed for an offence committed during imprisonment under the ICC sentence). The effect of the section is to ensure that the domestic sentence will continue to apply even where the prisoner has been transferred under section 44 or 45 to a different part of the UK than that in which the domestic sentence was imposed.

Section 47: Custody of prisoner in transit etc.

79. This section enables an ICC prisoner to be held in lawful custody by domestic authorities whilst outside prison, whether he is in the UK or on board a British vessel or aircraft. This would include, for example, while the prisoner is in transit between the UK and the ICC. **Subsection (4)** grants the powers of a constable to a person designated by the Secretary of State to take the prisoner to or from any place, or to keep the prisoner in custody, and provides for equivalent authority, protection and privileges.
80. **Subsection (5)** allows the arrest of any ICC prisoner who escapes or is unlawfully at large, including an ICC prisoner who escapes from prison in any part of the UK. Any constable (including someone granted custodial powers under **subsection (4)**), has the authority to arrest the fugitive prisoner without warrant.

Section 49: Power to make provision for enforcement of other orders

81. 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 a “forfeiture of proceeds, property and assets derived directly or indirectly from” the crime for which the person has been convicted. Moreover, 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.

82. **Section 49** empowers the Secretary of State to make regulations to enforce fines, forfeitures or reparation orders issued by the ICC against a convicted individual. The procedure will broadly follow that established in the Criminal Justice (International

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

Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 1991 (S.I. 1991/1463). The regulations may provide that, on receiving any such order, the Secretary of State will appoint a person to act on the ICC's behalf. The regulations will 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.

83. *Subsection (5)* provides safeguards in respect of persons with an interest or rights in property affected by such an order. This is in accordance with the Statute; Article 109.1, for example, provides that States Parties shall give effect to fines and forfeitures “without prejudice to the rights of bona fide third parties”.