

# **CORONERS AND JUSTICE ACT 2009**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### **Part 2 - Criminal offences**

#### *Chapter 3: Other offences*

#### *Section 70: Genocide, crimes against humanity and war crimes*

397. **Section 70** makes amendments to Part 5 of the 2001 Act in respect of the offences of genocide, crimes against humanity and war crimes. The amendments extend to England and Wales and Northern Ireland.
398. *Subsection (3)* inserts a new section 65A into the 2001 Act. The new section makes provision for the retrospective application of the offences of genocide, crimes against humanity and war crimes and related offences to things done on or after 1st January 1991.
399. Subsections (1), (3), (4), (5) and (7) of new section 65A have the effect of applying certain offences to acts committed on or after 1 January 1991. Those offences are genocide, crimes against humanity, war crimes, conduct ancillary to such offences committed outside the jurisdiction, offences ancillary to those offences and offences based on the responsibility of commanders and other superiors for such offences. With the exception of genocide and some of the categories of war crimes, the retrospective application of these offences is subject to a requirement that, at the time of its commission, the act constituting the offence amounted in the circumstances to a criminal offence under international law.
400. The effect of this requirement is to allow the courts to apply these offences in the 2001 Act to the extent that they were recognised in international law during the relevant period. So, for example, if a particular offence was recognised in international law at the time of the relevant conduct but in a narrower form than that of the offence set out in the 2001 Act, the defendant may still be convicted of the offence provided that his or her conduct met the elements of the offence as recognised at the relevant time in international law. The international law requirement ensures that the provisions comply with the principles enshrined in Article 7 of the ECHR. The requirement does not apply to genocide and certain categories of war crimes as it is beyond dispute that those offences (and all their constituent elements) were fully recognised in international law in 1991. The requirement is necessary for the other offences as, whilst the vast majority of them were recognised in international law during the relevant period, a small number may have been recognised in a narrower form than that provided for in the 2001 Act and a very small number of offences may not have been sufficiently recognised at all. In addition, international law developed during the period in question.
401. *Subsection (3)* also inserts a new section 65B into Part 5 of the 2001 Act. The new section modifies the penalties applicable to the offences for the period of retrospection

*These notes refer to the Coroners and Justice Act 2009  
(c.25) which received Royal Assent on 12 November 2009*

(1 January 1991 to 1 September 2001) in respect of certain specific offences. The 2001 Act provides for a maximum sentence of 30 years' imprisonment (other than where murder is involved). The same will generally apply for offences committed from 1 January 1991. However for domestic genocide and grave breaches of the Geneva Conventions (a category of war crimes), both of which were already offences in domestic law in 1991, a maximum penalty of 14 years' imprisonment applies instead of 30 years' (other than where murder is involved). This provision ensures that a higher penalty cannot be imposed for such offences than existed in domestic law at the time of their commission and consequently ensures compliance with Article 7 of the ECHR.

402. *Subsection (4)* inserts a new section 67A into Part 5 of the 2001 Act to make supplemental provision about UK residents. Such residents are liable under the 2001 Act for offences committed abroad if they are resident at the time of committing the crime or subsequently become resident. New section 67A makes additional provision in respect of UK residents in two ways. First, subsection (1) lists a number of categories of person who are to be treated as being resident in the UK for the specific purposes of Part 5 of the 2001 Act to the extent this would not otherwise be the case. The specific categories are listed in paragraphs (a) to (j). Secondly, subsection (2) of new section 67A provides a non-exhaustive list of considerations a court must take into account in determining whether a person is resident in the UK.