



# International Criminal Court (Scotland) Act 2001

2001 asp 13

## PART 2

### ASSISTANCE

#### *Introduction*

#### **11 Provision of assistance to the ICC**

- (1) The powers conferred by this Part of this Act on the Scottish Ministers are exercisable for the purpose of providing assistance to the ICC in relation to investigations or prosecutions where—
  - (a) an investigation has been initiated by the ICC; and
  - (b) the investigation and any proceedings arising out of it have not been concluded.
- (2) Where facsimile transmission is used—
  - (a) for the making of a request by the ICC or the transmission of any supporting documents; or
  - (b) for the transmission of any document in consequence of such a request,this Part of this Act applies as if the documents so sent were the originals of the documents so transmitted; and any such document shall be admissible in evidence accordingly.
- (3) Nothing in this Part of this Act shall be read as preventing the provision of assistance to the ICC otherwise than under this Part.

#### *Forms of assistance*

#### **12 Questioning**

- (1) This section applies where the Scottish Ministers receive a request from the ICC for assistance in questioning a person being investigated or prosecuted.

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- (2) The person concerned shall not be questioned in pursuance of the request unless—
  - (a) the person has been informed of the rights set out in article 55 (rights of persons during an investigation under the Statute of the ICC);
  - (b) the fact that the person has been so informed has been recorded in writing; and
  - (c) the person consents to be interviewed.
- (3) The provisions of article 55 are set out in schedule 3 to this Act.
- (4) Consent for the purposes of subsection (2)(c) above may be given orally or in writing; but if given orally it shall be recorded in writing as soon as is reasonably practicable.

### **13 Taking or production of evidence**

- (1) This section applies where the Scottish Ministers receive a request from the ICC for assistance in the taking or production of evidence.
- (2) The Scottish Ministers may nominate a court in Scotland to receive the evidence to which the request relates.
- (3) For this purpose the nominated court—
  - (a) has the same powers with respect to—
    - (i) securing the attendance of witnesses; and
    - (ii) subject to subsection (5) below, the production of documents or other articles,  
as it has for the purpose of other proceedings before the court; and
  - (b) may take evidence on oath.
- (4) Any proceedings under this section shall be conducted in private.
- (5) A person shall not be compelled to give evidence or produce anything in proceedings under this section that, under the Rules of Procedure and Evidence for the time being in force, the person could not be compelled to give or produce in proceedings before the ICC.
- (6) If in order to comply with the request it is necessary for the evidence received by the court to be verified in any manner, the notice nominating the court shall specify the nature of the verification required.
- (7) No order for expenses shall be made in proceedings under this section.
- (8) In subsection (5) above, the reference to the Rules of Procedure and Evidence is a reference to the rules adopted under article 51.

### **14 Taking or production of evidence: further provisions**

- (1) The following provisions apply in relation to proceedings before a nominated court under section 13 of this Act and the evidence received in the proceedings.
- (2) The court shall ensure that a record is kept of the proceedings that indicates, in particular—
  - (a) which persons with an interest in the proceedings were present; and
  - (b) which of those persons were represented and by whom.

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- (3) The record shall not be made available to any person except as authorised by the Scottish Ministers or with the leave of the court.
- (4) A copy of the record of the proceedings shall be sent to the Scottish Ministers for transmission to the ICC.

## 15 Service of process

- (1) This section applies where the Scottish Ministers receive from the ICC a summons or other document together with a request for it to be served on a person in Scotland.
- (2) The Scottish Ministers may direct the chief constable [<sup>F1</sup>of the Police Service of Scotland ] to cause the document to be personally served on the person.
- (3) If the document is so served, the chief constable shall forthwith inform the Scottish Ministers of when and how it was served.
- (4) If it does not prove possible to serve the document, the chief constable shall forthwith inform the Scottish Ministers of that fact and the reason.

### Annotations:

#### Amendments (Textual)

- F1** Words in s. 15(2) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 17](#); [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#))

## 16 Entry, search and seizure

- (1) Where the Scottish Ministers receive from the ICC a request for assistance which appears to them to require the exercise of a power of entry, search or seizure, they may direct the procurator fiscal to apply to the sheriff for a warrant authorising entry, search and seizure by any constable.
- (2) The sheriff shall have the same power in relation to an application for a warrant under subsection (1) above as the sheriff has in relation to an application for a warrant at common law.
- (3) A warrant granted by virtue of this section may authorise such person as the sheriff considers appropriate to accompany a constable acting in exercise of the warrant; and any such person shall be named in the warrant.

## 17 Taking of fingerprints etc.

Schedule 4 to this Act (which makes provision with respect to the taking of fingerprints etc. in response to a request from the ICC for assistance in obtaining evidence as to the identity of a person) shall have effect.

## 18 Provision of records and documents

- (1) This section applies where the Scottish Ministers receive a request from the ICC for the provision of records and documents relating to—

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- (a) the evidence given in any proceedings in Scotland in respect of conduct that would constitute an ICC crime; or
  - (b) the results of any investigation of such conduct with a view to such proceedings.
- (2) The Scottish Ministers shall take such steps as appear to them to be appropriate to obtain the records and documents requested; and on their being produced to them they shall transmit them to the ICC.

## **19 Investigation of proceeds of ICC crime**

Where the Scottish Ministers receive a request from the ICC for assistance—

- (a) in ascertaining whether a person has benefited from an ICC crime; or
- (b) in identifying the extent or whereabouts of property derived directly or indirectly from an ICC crime,

the Scottish Ministers may direct such person as they may authorise to apply on behalf of the ICC for an order or warrant under schedule 5 to this Act (which makes provision for production or access orders and the issuing of search warrants).

## **20 Freezing orders in respect of property liable to forfeiture**

Where the Scottish Ministers receive a request from the ICC for assistance in the freezing or seizure of proceeds, property and assets or instrumentalities of crime for the purpose of eventual forfeiture, they may—

- (a) authorise a person to act on behalf of the ICC for the purposes of applying for a freezing order, or applying for the variation or discharge of such an order; and
- (b) direct that person to apply for such an order, or the variation or discharge of such an order, under schedule 6 to this Act (which makes provision for freezing orders in respect of property liable to forfeiture).

### *Supplementary provisions*

## **21 Verification of material**

If in order to comply with a request of the ICC it is necessary for any evidence or other material obtained under this Part of this Act to be verified in any manner, the Scottish Ministers may give directions as to the nature of the verification required.

## **22 Transmission of material to the ICC**

- (1) Any evidence or other material obtained under this Part of this Act by a person other than the Scottish Ministers, together with any requisite verification, shall be sent to the Scottish Ministers for transmission to the ICC.
- (2) Where any evidence or other material is to be transmitted to the ICC, there shall be transmitted—
  - (a) where the material consists of a document, the original or a copy; and
  - (b) where the material consists of any other article, the article itself or a photograph or other description of it,
 as may be necessary to comply with the request of the ICC.

**Changes to legislation:**

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