



# International Criminal Court (Scotland) Act 2001

2001 asp 13

## PART 1

### OFFENCES

#### *Offences*

#### **1 Genocide, crimes against humanity and war crimes**

- (1) It shall be an offence for a person to commit genocide, a crime against humanity or a war crime.
- (2) Subsection (1) above applies to acts committed—
  - (a) in Scotland; or
  - (b) outwith the United Kingdom by a United Kingdom national or a United Kingdom resident.
- (3) The Genocide Act 1969 (c.12) is repealed.
- (4) In subsection (1) above—
  - “genocide” means an act of genocide as defined in article 6;
  - “crime against humanity” means a crime against humanity as defined in article 7; and
  - “war crime” means a war crime as defined in article 8.2.
- (5) The relevant provisions of the articles mentioned in subsection (4) above are set out in schedule 1 to this Act.
- (6) For the purposes of this Part of this Act, no account shall be taken of any provision of the articles omitted from the text set out in that schedule.

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*Changes to legislation: There are currently no known outstanding effects for the International Criminal Court (Scotland) Act 2001, Part 1. (See end of Document for details)*

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## **2 Conduct ancillary to genocide etc.**

- (1) It shall be an offence for a person to engage in conduct ancillary to an act that constitutes—
  - (a) an offence under section 1(1) of this Act; or
  - (b) an offence under this section.
- (2) Subsection (1) above applies where the conduct in question consists of or includes an act committed outwith Scotland by a United Kingdom national or a United Kingdom resident.
- (3) It shall be an offence for a person to engage in conduct ancillary to an act committed (or intended to be committed) outwith Scotland by a person other than a United Kingdom national or a United Kingdom resident that, if the act were committed in Scotland (or were committed by a United Kingdom national or a United Kingdom resident), would constitute—
  - (a) an offence under section 1(1) of this Act; or
  - (b) an offence under this section.
- (4) Subsection (3) above applies where the conduct in question consists of or includes an act committed—
  - (a) in Scotland; or
  - (b) outwith the United Kingdom by a United Kingdom national or a United Kingdom resident.
- (5) The references in subsections (1) and (3) above to conduct ancillary to an act are to conduct that would constitute an ancillary offence in relation to that act if—
  - (a) that conduct consisted of or included an act committed in Scotland; and
  - (b) that act were committed in Scotland.

## **3 Trial and punishment of main offences**

- (1) This section applies in relation to—
  - (a) offences under section 1 of this Act;
  - (b) offences under section 2 of this Act; and
  - (c) offences ancillary to an offence within paragraph (a) or (b) above.
- (2) The offence shall be triable only on indictment.
- (3) If an offence is committed outwith Scotland proceedings may be taken in any place in Scotland; and the offence may for incidental purposes be treated as having been committed in that place.
- (4) A person convicted of—
  - (a) an offence involving murder; or
  - (b) an offence ancillary to an offence involving murder,shall be dealt with as for an offence of murder or, as the case may be, the corresponding ancillary offence in relation to murder.
- (5) Any person convicted of an offence (other than an offence involving murder or an offence ancillary to an offence involving murder) shall be liable to imprisonment for a term not exceeding 30 years.

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- (6) In this section “murder” means the killing of a person in such circumstances as would, if committed in Scotland, constitute murder.

#### 4 Offences in relation to the ICC

- (1) A person intentionally committing any of the acts mentioned in article 70.1 (offences against the administration of justice) may be dealt with as for the corresponding offence under the law of Scotland committed in relation to the High Court of Justiciary or the Court of Session.
- (2) The corresponding offences under the law of Scotland are—
- (a) in relation to article 70.1(a) (giving false testimony when under an obligation to tell the truth), an offence under section 44(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) or at common law;
  - (b) in relation to article 70.1(b) to (e) (other offences), an offence at common law [<sup>F1</sup>or (as the case may be) under the Bribery Act 2010]; and
  - (c) in relation to article 70.1(f) (soliciting or accepting a bribe as an official of the ICC), an offence under [<sup>F2</sup>the Bribery Act 2010 ].
- (3) This section and, so far as may be necessary for the purposes of this section, the enactments and rules of law relating to the corresponding offences under the law of Scotland apply to acts committed—
- (a) in Scotland; or
  - (b) outwith the United Kingdom by a United Kingdom national or a United Kingdom resident.
- (4) If an offence under this section, or an offence ancillary to such an offence, is committed outwith the United Kingdom proceedings may be taken in any place in Scotland; and the offence may for incidental purposes be treated as having been committed in that place.
- (5) The relevant provisions of article 70.1 are set out in schedule 2 to this Act.

#### Textual Amendments

- F1** Words in s. 4(2)(b) inserted (1.7.2011) by Bribery Act 2010 (c. 23), s. 19(1), **Sch. 1 para. 6(a)** (with ss. 16, 19(5)); S.I. 2011/1418, art. 2
- F2** Words in s. 4(2)(c) substituted (1.7.2011) by Bribery Act 2010 (c. 23), s. 19(1), **Sch. 1 para. 6(b)** (with ss. 16, 19(5)); S.I. 2011/1418, art. 2

#### 5 Responsibility of military commanders and other superiors

- (1) This section applies in relation to—
- (a) offences under this Part of this Act; and
  - (b) offences ancillary to such offences.
- (2) A military commander, or a person effectively acting as a military commander, shall be responsible for offences committed by forces under his effective command and control, or (as the case may be) his effective authority and control, as a result of his failure to exercise control properly over such forces where—

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- (a) he either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences; and
  - (b) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (3) With respect to superior and subordinate relationships not described in subsection (2) above, a superior shall be responsible for offences committed by subordinates under his effective authority and control, as a result of his failure to exercise control properly over such subordinates where—
- (a) he either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offences;
  - (b) the offences concerned activities that were within his effective responsibility and control; and
  - (c) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (4) A person responsible under this section for an offence shall be regarded as being art and part in the commission of the offence.
- (5) Nothing in this section shall be read as restricting or excluding—
- (a) any liability of a commander or other superior apart from this section; or
  - (b) the liability of any person other than a commander or other superior.

## **6 Proceedings against persons becoming resident in the United Kingdom**

- (1) This section applies in relation to a person who—
- (a) commits acts outwith the United Kingdom at a time when that person is neither a United Kingdom national nor a United Kingdom resident; and
  - (b) subsequently becomes a United Kingdom resident.
- (2) Proceedings may be brought against such a person in Scotland for a substantive offence if—
- (a) that person is a United Kingdom resident at the time the proceedings are brought; and
  - (b) the acts in respect of which the proceedings are brought would have constituted that offence if they had been committed in Scotland.
- (3) Proceedings may be brought against such a person in Scotland for an offence ancillary to a substantive offence (or what would be such a substantive offence if committed in Scotland) if—
- (a) that person is a United Kingdom resident at the time the proceedings are brought; and
  - (b) the acts in respect of which the proceedings are brought would have constituted that ancillary offence if they had been committed in Scotland.
- (4) In this section a “substantive offence” means an offence under this Part of this Act other than an ancillary offence.
- (5) Nothing in this section shall be read as restricting the operation of any other provision of this Part of this Act.

## Supplementary provisions

### 7 Meaning of “ancillary offence”

References in this Part of this Act to an ancillary offence are to—

- (a) being art and part in the commission of an offence;
- (b) inciting a person to commit an offence;
- (c) attempting or conspiring to commit an offence;
- (d) perverting, or attempting to pervert, the course of justice in connection with an offence; or
- (e) defeating, or attempting to defeat, the ends of justice in connection with an offence.

### 8 Mental element

(1) References in this Part of this Act to a person committing—

- (a) genocide;
- (b) a crime against humanity;
- (c) a war crime; or
- (d) any of the acts mentioned in article 70.1 (offences against the administration of justice),

shall be construed in accordance with this section.

(2) Unless otherwise provided by—

- (a) the articles mentioned in the definition in section 1(4) of this Act of the crimes specified in subsection (1)(a) to (c) above;
- (b) any relevant Elements of Crimes;
- (c) section 4(1) of this Act or article 70.1; or
- (d) section 5 of this Act,

a person shall be regarded as committing such an act or crime only if the material elements are committed with intent and knowledge.

(3) For the purposes of subsection (2) above—

- (a) a person has intent—
  - (i) in relation to conduct, where the person means to engage in the conduct; and
  - (ii) in relation to a consequence, where the person means to cause the consequence or is aware that it will occur in the ordinary course of events; and
- (b) “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

### [<sup>F3</sup>8A Meaning of “United Kingdom national” and “United Kingdom resident”

(1) In this Part—

“United Kingdom national” means—

- (a) a British citizen, a British Overseas Territories citizen, a British National (Overseas) or a British Overseas citizen,

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- (b) a person who under the British Nationality Act 1981 (c.61) is a British subject, or
  - (c) a British protected person within the meaning of that Act,
- “ United Kingdom resident ” means a person who is resident in the United Kingdom.
- (2) To the extent that it would not otherwise be the case, the following individuals are to be treated for the purposes of this Part as being resident in the United Kingdom—
- (a) an individual who has indefinite leave to remain in the United Kingdom,
  - (b) any other individual who has made an application for such leave (whether or not it has been determined) and who is in the United Kingdom,
  - (c) an individual who has leave to enter or remain in the United Kingdom for the purposes of work or study and who is in the United Kingdom,
  - (d) an individual who has made an asylum claim, or a human rights claim, which has been granted,
  - (e) any other individual who has made an asylum claim or a human rights claim (whether or not the claim has been determined) and who is in the United Kingdom,
  - (f) an individual named in an application for indefinite leave to remain, an asylum claim or a human rights claim as a dependant of the individual making the application or claim if—
    - (i) the application or claim has been granted, or
    - (ii) the named individual is in the United Kingdom (whether or not the application or claim has been determined),
  - (g) an individual who would be liable to removal or deportation from the United Kingdom but cannot be removed or deported because of section 6 of the Human Rights Act 1998 (c.42) or for practical reasons,
  - (h) an individual—
    - (i) against whom a decision to make a deportation order under section 5(1) of the Immigration Act 1971 (c.77) by virtue of section 3(5)(a) of that Act (deportation conducive to the public good) has been made,
    - (ii) who has appealed against the decision to make the order (whether or not the appeal has been determined), and
    - (iii) who is in the United Kingdom,
  - (i) an individual who is an illegal entrant within the meaning of section 33(1) of the Immigration Act 1971 or who is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c.33),
  - (j) an individual who is detained in lawful custody in the United Kingdom.
- (3) When determining for the purposes of this Part whether any other individual is resident in the United Kingdom regard is to be had to all relevant considerations including—
- (a) the periods during which the individual is, has been or intends to be in the United Kingdom,
  - (b) the purposes for which the individual is, has been or intends to be in the United Kingdom,
  - (c) whether the individual has family or other connections to the United Kingdom and the nature of those connections, and
  - (d) whether the individual has an interest in residential property located in the United Kingdom.

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(4) In this section—

“ asylum claim ” means—

- (a) a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom,
- (b) a claim that the claimant would face a real risk of serious harm if removed from the United Kingdom,

“ Convention rights ” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998,

“ detained in lawful custody ” means—

- (a) detained in pursuance of a sentence of imprisonment or detention, a sentence of custody for life or a detention and training order,
- (b) remanded in or committed to custody by an order of a court,
- (c) detained pursuant to an order under section 2 of the Colonial Prisoners Removal Act 1884 (c.31) or a warrant under section 1 or 4A of the Repatriation of Prisoners Act 1984 (c.47),
- (d) detained under Part 3 of the Mental Health Act 1983 (c.20) or by virtue of an order under section 5 of the Criminal Procedure (Insanity) Act 1964 (c.84) or section 6 or 14 of the Criminal Appeal Act 1968 (c.19) (hospital orders etc. ),
- (e) detained by virtue of an order under Part 6 of the Criminal Procedure (Scotland) Act 1995 (c.46) (other than an order under section 60C) or a hospital direction under section 59A of that Act, and includes detention by virtue of the special restrictions set out in Part 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) to which a person is subject by virtue of an order under section 59 of the Criminal Procedure (Scotland) Act 1995,
- (f) detained under Part 3 of the Mental Health (Northern Ireland) Order 1986 ( SI 1986/595) or by virtue of an order under section 11 or 13(5A) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47),

“ human rights claim ” means a claim that to remove the claimant from, or to require the claimant to leave, the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Convention) as being incompatible with the person's Convention rights,

“ the Refugee Convention ” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention,

“ serious harm ” has the meaning given by article 15 of Council Directive [2004/83/ EC](#) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

(5) In this section, a reference to having leave to enter or remain in the United Kingdom is to be construed in accordance with the Immigration Act 1971.

(6) This section applies in relation to any offence under this Part (whether committed before or after the coming into force of this section).]

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### Textual Amendments

**F3** S. 8A inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 32\(2\), 206\(1\)](#); [S.S.I. 2011/178, art. 2, Sch.](#)

## 9 Application of principles of the law of Scotland, construction etc.

- (1) In determining whether an offence under this Part of this Act has been committed the court shall apply the principles of the law of Scotland.
- (2) In interpreting and applying the provisions of the articles mentioned in section 1(4) of this Act the court shall take into account any relevant Elements of Crimes.
- (3) The articles mentioned in section 1(4) of this Act shall for the purposes of this Part of this Act be construed subject to and in accordance with any relevant reservation or declaration certified by Order in Council under section 50(4) of the 2001 Act.
- (4) In interpreting and applying the provisions of sections 5 and 8 of this Act, and the provisions of articles 6, 7, 8.2 and 70.1, the court—
  - (a) shall take into account any relevant judgment or decision of the ICC; and
  - (b) may take into account any other relevant international jurisprudence.
- (5) Nothing in this Part of this Act shall be read as restricting the operation of any enactment or rule of law relating to—
  - (a) the extra-territorial application of offences (including offences under this Part of this Act); or
  - (b) offences ancillary to offences under this Part of this Act (wherever committed).

### [<sup>F4</sup> 9A Retrospective application of certain offences

- (1) Section 1 of this Act applies to acts committed on or after 1 January 1991.
- (2) But that section does not apply to an act committed before 17 December 2001 which constitutes a crime against humanity or a war crime within article 8.2(b) or (e) unless, at the time the act was committed, it amounted in the circumstances to a criminal offence under international law.
- (3) Section 2 of this Act applies to conduct engaged in on or after 1 January 1991.
- (4) The references in subsections (1), (3) and (5) of that section to an offence include an act or conduct that would not constitute an offence but for this section.
- (5) Any enactment or rule of law relating to an offence ancillary to a relevant offence applies—
  - (a) to conduct engaged in on or after 1 January 1991, and
  - (b) even if the act or conduct constituting the relevant offence would not constitute such an offence but for this section.
- (6) But section 2 of this Act, and any enactment or rule of law relating to an offence ancillary to a relevant offence, do not apply to—
  - (a) conduct engaged in before 17 December 2001, or



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- (b) conduct engaged in on or after that date which was ancillary to an act or conduct that—
  - (i) was committed or engaged in before that date, and
  - (ii) would not constitute a relevant offence but for this section,unless, at the time the conduct was engaged in, it amounted in the circumstances to a criminal offence under international law.
- (7) Section 5 of this Act, so far as it has effect in relation to relevant offences, applies—
  - (a) to failures to exercise control of the kind mentioned in subsection (2) or (3) of that section which occurred on or after 1 January 1991, and
  - (b) even if the act or conduct constituting the relevant offence would not constitute an offence but for this section.
- (8) But section 5 of this Act, so far as it has effect in relation to relevant offences, does not apply to a failure to exercise control of the kind mentioned in subsection (2) or (3) of that section which occurred before 17 December 2001 unless, at the time it occurred, it amounted in the circumstances to a criminal offence under international law.
- (9) In this section, “relevant offence” means an offence under section 1 or 2 of this Act or an offence ancillary to such an offence.

**Textual Amendments**

**F4** Ss. 9A, 9B inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 33, 206(1); S.S.I. 2011/178, art. 2, Sch.

**9B Provision supplemental to section 9A: modification of penalties**

- (1) This section applies in relation to—
  - (a) an offence under section 1 of this Act on account of an act committed before 17 December 2001 constituting genocide, if at the time the act was committed it also amounted to an offence under section 1 of the Genocide Act 1969,
  - (b) an offence under section 1 of this Act on account of an act committed before 1 September 2001 constituting a war crime, if at the time the act was committed it also amounted to an offence under section 1 of the Geneva Conventions Act 1957 (c.52) (grave breaches of the Conventions),
  - (c) an offence ancillary to an offence within paragraph (a) or (b) above.
- (2) Section 3(5) of this Act has effect in relation to such an offence as if for “30 years” there were substituted 14 years.]

**Textual Amendments**

**F4** Ss. 9A, 9B inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 33, 206(1); S.S.I. 2011/178, art. 2, Sch.

**10 Amendment of Criminal Procedure (Scotland) Act 1995**

**F5** .....

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*Changes to legislation: There are currently no known outstanding effects for the  
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#### **Textual Amendments**

- F5** S. 10 repealed (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), [s. 9](#); [S.S.I. 2002/443](#), [art. 3](#)

**Changes to legislation:**

There are currently no known outstanding effects for the International Criminal Court (Scotland) Act 2001, Part 1.