

INTERNATIONAL CRIMINAL COURT ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Enforcement of Sentences and Orders

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).