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## SCHEDULES

### SCHEDULE 1

Section 1(3)

#### SUPPLEMENTARY PROVISIONS RELATING TO THE ICC

##### *Legal capacity, privileges and immunities*

1 (1) Her Majesty may by Order in Council confer on the ICC the legal capacities of a body corporate.

(2) Her Majesty may by Order in Council provide that—

- (a) the ICC,
- (b) the judges, the Prosecutor, the Deputy Prosecutors and the Registrar [<sup>F1</sup>and members of their families who form part of their households,]
- (c) the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry, <sup>F2</sup>. . .
- (d) counsel, experts, witnesses and other persons involved in proceedings of the ICC, [<sup>F3</sup>and]
- [<sup>F4</sup>(e) persons attending meetings of the Assembly (including persons attending such meetings as observers and persons invited to such meetings),]

shall have such privileges and immunities as, in the opinion of Her Majesty, are or will be required for giving effect to the ICC Statute or any related agreement to which the United Kingdom, or Her Majesty's government in the United Kingdom, is or will be a party.

[<sup>F5</sup>(3) In sub-paragraph (2)(e) “the Assembly” means the Assembly of States Parties to the ICC statute (and includes the subsidiary organs of that Assembly).]

##### **Textual Amendments**

- F1** Words in Sch. 1 para. 1(2)(b) inserted (7.6.2005) by International Organisations Act 2005 (c. 20), ss. 6(2)(a), 11(3)
- F2** Word in Sch. 1 para. 1(2)(c) repealed (7.6.2005) by International Organisations Act 2005 (c. 20), ss. 6(2)(b), 9, 11(3), Sch.
- F3** Sch. 1 para. 1(2)(e) and word inserted (7.6.2005) by International Organisations Act 2005 (c. 20), ss. 6(2)(c), 11(3)
- F4** Sch. 1 para. 1(2)(e) and word inserted (7.6.2005) by International Organisations Act 2005 (c. 20), ss. 6(2)(c), 11(3)
- F5** Sch. 1 para. 1(3) inserted (7.6.2005) by International Organisations Act 2005 (c. 20), ss. 6(3), 11(3)

##### **Commencement Information**

- I1** Sch. 1 para. 1 wholly in force at 1.9.2001; Sch. 1 para. 1 not in force at Royal Assent see s. 82; Sch. 1 para. 1 in force for specified purposes at 13.6.2001 and otherwise 1.9.2001 by S.I. 2001/2161, arts. 2, 3 (as amended (25.6.2001) by S.I. 2001/2304, art. 2)

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*Power to provide for sittings of the ICC in the UK*

- 2 (1) Her Majesty may by Order in Council make such provision as appears to Her Majesty to be necessary or expedient to enable sittings of the ICC to be held in the United Kingdom.
- (2) Provision may in particular be made with respect to the detention of persons in the custody of the ICC.

*Power to give effect to Rules of Procedure and Evidence etc.*

- 3 Her Majesty may by Order in Council make such provision as appears to Her Majesty to be necessary or expedient for giving effect to—
- (a) any Rules of Procedure and Evidence having effect under article 51, and
  - (b) any related agreement to which the United Kingdom, or Her Majesty's government in the United Kingdom, is a party.

*Parliamentary approval of draft Orders*

- 4 No recommendation shall be made to Her Majesty to make an Order in Council under paragraph 1, 2 or 3 unless a draft—
- (a) has been laid before Parliament and approved by a resolution of each House of Parliament, and
  - (b) has been laid before, and approved by resolution of, the Scottish Parliament.

*Proof of orders, etc. of the ICC*

- 5 (1) An order, judgment, warrant or request of the ICC which purports—
- (a) to bear the seal of the ICC, or
  - (b) to be signed by a person in his capacity as a judge or officer of the ICC,
- shall, for the purposes of this Act, be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person.
- (2) A document, duly authenticated, which purports to be a copy of an order, judgment, warrant or request of the ICC shall, for the purposes of this Act, be deemed without further proof to be a true copy.

For this purpose a document is duly authenticated if it purports to be certified by any person in his capacity as a judge or officer of the ICC.

**Modifications etc. (not altering text)**

**C1** Sch. 1 para. 5 applied (S.) (17.12.2001) by 2001 asp 13, s. 27(1) (with s. 29); S.S.I. 2001/456, art. 2

*Evidence about ICC proceedings and orders*

- 6 (1) For the purposes of this Act a certificate purporting to be issued by or on behalf of the ICC stating—
- (a) that an investigation has been initiated by the Court, or that proceedings before the Court have been instituted and have not been concluded,
  - (b) that an order of the Court is in force and is not subject to appeal,

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- (c) that property recoverable under a forfeiture order made by the Court remains unrecovered, or
- (d) that any person has been notified of any proceedings in accordance with the ICC Statute,

is admissible in proceedings under this Act as evidence of the facts stated.

- (2) In proceedings under Part 2, 3 or 4 of this Act a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given, in proceedings before the ICC is admissible as evidence of any fact stated in it.

For this purpose a document is duly authenticated if it purports to be certified by any person in his capacity as a judge or officer of the ICC, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document setting out or summarising the evidence or a true copy of that document.

- (3) Nothing in this paragraph affects the admission of any evidence, whether contained in a document or otherwise, which is admissible apart from this paragraph.

**Modifications etc. (not altering text)**

**C2** [Sch. 1 para. 6](#) applied (with modifications) (S.) (17.12.2001) by [2001 asp 13, s. 27\(2\)](#) (with [s. 29](#)); [S.S.I. 2001/456, art. 2](#)

*Pension provision for UK judges of ICC*

- 7 (1) The appropriate Minister may by order make provision for securing that a holder of a United Kingdom judicial office who serves as a judge of the ICC is not worse off as regards pension benefits than if he had not been appointed to the ICC.
- (2) The order may—
  - (a) entitle an ICC judge who was, immediately before his appointment as an ICC judge, a member of a judicial pension scheme to remain as a member of that scheme, or
  - (b) authorise the making of such other arrangements as appear to the Minister to be appropriate.
- (3) An order making such provision as is mentioned in sub-paragraph (2)(a) may include such provision as the appropriate Minister considers is necessary to secure—
  - (a) that the terms on which an ICC judge remains a member of a judicial pension scheme are those which would have been applicable had he not been appointed as an ICC judge, and
  - (b) that entitlement to benefits payable in accordance with the scheme continues to be determined as if, while serving as an ICC judge, his salary was that which would (but for section 68(3)(a) of the Access to Justice Act 1999 (c. 22)) have been payable to him in respect of his continuing service as the holder of his United Kingdom judicial office.
- (4) Any such order may also make provision—
  - (a) for any contributions payable by a person who remains a member of a judicial pension scheme as a result of the order, and which would otherwise

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- be payable by deduction from his salary, to be made otherwise than by deduction from his salary as an ICC judge, and
- (b) for such contributions to be collected in such manner as may be determined by the administrators of the scheme.
- (5) Any such order—
- (a) shall have effect notwithstanding section 68(3)(b) of the Access to Justice Act 1999, and
- (b) may amend any provision of, or made under, any of the judicial pensions Acts in such manner and to such extent as the appropriate Minister considers necessary or expedient to ensure the proper administration of any scheme to which it relates.
- (6) Any payments made in pursuance of such arrangements as are mentioned in subparagraph (2)(b) to, or in respect of, a holder of a United Kingdom judicial office shall be charged on, and paid out of, the Consolidated Fund.
- (7) In this paragraph—
- “the appropriate Minister” means—
- (a) in relation to a judicial office whose jurisdiction is exercisable exclusively in Scotland, the Secretary of State, and
- (b) otherwise, the Lord Chancellor;
- “the judicial pensions Acts” means—
- (a) the County Courts Act (Northern Ireland) 1959 (c. 25) (N.I.),
- (b) the Sheriffs’ Pensions (Scotland) Act 1961 (c. 42),
- (c) the Judicial Pensions Act 1981 (c. 20), and
- (d) the Judicial Pensions and Retirement Act 1993 (c. 8);
- “judicial pension scheme” means a scheme established by and in accordance with any of those Acts; and
- “United Kingdom judicial office” means the office of—
- (a) Lord Justice of Appeal, Justice of the High Court or Circuit judge, in England and Wales,
- (b) judge of the Court of Session or sheriff, in Scotland, or
- (c) Lord Justice of Appeal, judge of the High Court or county court judge, in Northern Ireland.
- (8) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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## SCHEDULE 2

Section 24

### DELIVERY UP OF PERSONS SUBJECT TO CRIMINAL PROCEEDINGS, &C.

#### PART 1

##### CRIMINAL PROCEEDINGS

###### *Meaning of “criminal proceedings”*

- 1 In this Part of this Schedule “criminal proceedings” means proceedings before a national court—
- (a) for dealing with an individual accused of an offence,
  - (b) for dealing with an individual convicted of an offence, or
  - (c) on an appeal from any proceedings within paragraph (a) or (b).

###### *Criminal proceedings in England and Wales or Northern Ireland*

- 2 (1) Where—
- (a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and
  - (b) criminal proceedings against that person are pending or in progress before a court in England and Wales or Northern Ireland,
- the Secretary of State shall inform the court of the request.
- (2) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.
- (3) If a delivery order is made and the criminal proceedings are still pending or in progress, the Secretary of State—
- (a) shall consult the ICC before giving directions for the execution of the order, and
  - (b) may direct that the criminal proceedings shall be discontinued.
- (4) Where the Secretary of State directs that criminal proceedings shall be discontinued, the court before which the proceedings are pending or in progress shall—
- (a) order their discontinuance, and
  - (b) make any other order necessary to enable the delivery order to be executed (including any necessary order as to the custody of the person concerned).
- (5) The discontinuance under this paragraph of criminal proceedings in respect of an offence does not prevent the institution of fresh proceedings in respect of the offence.

###### *Criminal proceedings in Scotland*

- 3 (1) Where—
- (a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and
  - (b) criminal proceedings against that person are pending or in progress before a court in Scotland,

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the Secretary of State shall inform the Scottish Ministers of the request and they shall inform the court.

- (2) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.
- (3) If a delivery order is made and the criminal proceedings are still pending or in progress, the Secretary of State shall consult the ICC before giving directions for the execution of the order.

*Proceedings before service court*

- 4 (1) Where—
  - (a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and
  - (b) proceedings against that person are pending or in progress before a service court,
 the Secretary of State shall inform the court of the request.
- (2) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.
- (3) If a delivery order is made and the proceedings before a service court are still pending or in progress, the Secretary of State—
  - (a) shall consult the ICC before giving directions for the execution of the delivery order, and
  - (b) may direct that the proceedings before the service court shall be discontinued.
- (4) Where the Secretary of State directs that proceedings before a service court shall be discontinued, the court shall—
  - (a) order their discontinuance, and
  - (b) make any other order necessary to enable the delivery order to be executed (including any necessary order as to the custody of the person concerned).
- (5) The discontinuance under this paragraph of proceedings before a service court in respect of an offence does not prevent the institution of fresh proceedings in respect of the offence.

*Effect on custodial sentences*

- 5 (1) Where in pursuance of Part 2 of this Act a person who is a prisoner is delivered up—
    - (a) into the custody of the ICC, or
    - (b) into the custody of a state where he is to undergo imprisonment under a sentence of the ICC,
 he shall continue to be liable to complete any term of imprisonment or detention to which he had been sentenced by a national court.
- But there shall be counted towards the completion of that term any time during which he is in the custody of the ICC or of another state.

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- (2) Where in pursuance of Part 2 of this Act a court orders the discharge of a person who is a prisoner, the discharge is without prejudice to the liability of the prisoner to complete any term of imprisonment or detention to which he has been sentenced by a national court.

Accordingly, a prisoner to whom such an order relates and whose sentence has not expired shall be transferred in custody to the place where he is liable to be detained under the sentence to which he is subject.

- (3) Where in pursuance of Part 2 of this Act a delivery order is made in respect of a person who is a prisoner, the order may include provision authorising the return of the prisoner into the custody of the Secretary of State—

- (a) in accordance with arrangements made by the Secretary of State with the ICC, or  
(b) in the case of a prisoner taken to a place where he is to undergo imprisonment under a sentence of the ICC, in accordance with arrangements made by the Secretary of State with the state where that place is situated,

and for his transfer in custody to the place where he is liable to be detained under the sentence of the national court to which he is subject.

- (4) In the application of sub-paragraph (3) where the prisoner is liable to be detained in Scotland—

- (a) the reference to the custody of the Secretary of State shall be read as a reference to the custody of the Scottish Ministers, and  
(b) the Secretary of State shall consult the Scottish Ministers before making any such arrangements as are mentioned in paragraph (a) or (b).

- (5) In this paragraph “prisoner” means—

- (a) a person serving a sentence in a prison or other institution to which the Prison Act 1952 (c. 52), the Prisons (Scotland) Act 1989 or the Prisons Act (Northern Ireland) 1953 applies, or  
(b) a person serving a sentence of [<sup>F6</sup>service detention (within the meaning of the Armed Forces Act 2006)] or imprisonment imposed by a service court.

#### Textual Amendments

- F6** Words in Sch. 2 para. 5(5)(b) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 191](#); [S.I. 2009/812](#), art. 3(a) (b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4

#### *Power to suspend or revoke other orders*

- 6 (1) This paragraph applies where a court makes a delivery order in respect of a person in respect of whom an order (other than a sentence of imprisonment or detention) has been made in criminal proceedings before a national court.
- (2) The court may make any order necessary to enable the delivery order to be executed, and may in particular suspend or revoke any such order as is mentioned in sub-paragraph (1).

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## PART 2

### EXTRADITION PROCEEDINGS

#### *Meaning of “extradition proceedings”*

[<sup>F7</sup> In this Part of this Schedule “extradition proceedings” means proceedings before a court or judge in the United Kingdom under the Extradition Act 2003.]

#### **Textual Amendments**

**F7** Sch. 2 Pt. 2 para. 7 substituted (1.1.2004) by Extradition Act 2003 (c. 41), s. 219, Sch. 3 para. 13(1) (2); S.I. 2003/3103, art. 2

#### *Extradition proceedings in England and Wales or Northern Ireland*

- 8 (1) Where—
- (a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and
  - (b) extradition proceedings against that person are pending or in progress before a court in England and Wales or Northern Ireland,
- the Secretary of State shall inform the court of the request.
- (2) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.
- (3) If a delivery order is made and the extradition proceedings are still pending or in progress, the Secretary of State—
- (a) shall consult the ICC before giving directions for the execution of the order, and
  - (b) may direct that the extradition proceedings shall be discontinued.
- (4) Where the Secretary of State directs that extradition proceedings shall be discontinued, the court before which the proceedings are pending or in progress shall—
- (a) order their discontinuance, and
  - (b) make any other order necessary to enable the delivery order to be executed (including any necessary order as to the custody of the person concerned).
- (5) The discontinuance under this paragraph of extradition proceedings in respect of an offence does not prevent the institution of fresh extradition proceedings in respect of the offence.

[<sup>F8</sup>(6) References in this paragraph to a court include references to a judge.]

#### **Textual Amendments**

**F8** Sch. 2 Pt. 2 para. 8(6) inserted (1.1.2004) by Extradition Act 2003 (c. 41), s. 219, Sch. 3 para. 13(1) (3); S.I. 2003/3103, art. 2



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### *Extradition proceedings in Scotland*

- 9 (1) Where—
- (a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and
  - (b) extradition proceedings against that person are pending or in progress before a court in Scotland,
- the Secretary of State shall inform the Scottish Ministers of the request and they shall inform the court.
- (2) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.
- (3) If a delivery order is made and the extradition proceedings are still pending or in progress, the Secretary of State shall consult the ICC before giving directions for the execution of the order.
- [<sup>F9</sup>(4) References in this paragraph to a court include references to a judge.]

#### **Textual Amendments**

- F9** Sch. 2 Pt. 2 para. 9(4) inserted (1.1.2004) by Extradition Act 2003 (c. 41), s. 219, Sch. 3 para. 13(1)(4); S.I. 2003/3103, art. 2 (subject to savings Order (as amended by S.I. 2003/3103, art. 2(2) and S.I. 2003/3258, art. 2(2)))

### *Power to suspend or revoke warrant or order*

- 10 [<sup>F10</sup>(1) Where a court makes a delivery order in respect of a person whose extradition has been ordered under the Extradition Act 2003, it may make any such order as is necessary to enable the delivery order to be executed.]
- (2) The court may, in particular, suspend or revoke any warrant or other order made <sup>F11</sup> . . . in respect of the person.

#### **Textual Amendments**

- F10** Sch. 2 Pt. 2 para. 10(1) substituted (1.1.2004) by Extradition Act 2003 (c. 41), s. 219, Sch. 3 para. 13(1)(5); S.I. 2003/3103, art. 2 (subject to savings in Order (as amended by S.I. 2003/3312, art. 2(2)) and S.I. 2003/3258, art. 2(2)))
- F11** Words in Sch. 2 Pt. 2 para. 10(2) repealed (1.4.2004) by Extradition Act 2003 (c. 41), ss. 219, 220, Sch. 3 para. 13(1)(6), Sch. 4; S.I. 2003/3103, art. 2 (subject to savings in Order (as amended by S.I. 2003/3312, art. 2(2)) and S.I. 2003/3258, art. 2(2)))

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### PART 3

#### OTHER DELIVERY PROCEEDINGS

##### *Meaning of “other delivery proceedings”*

- 11 In this Part of this Schedule “other delivery proceedings” means proceedings before a court in the United Kingdom for a delivery order under—
- (a) the United Nations (International Tribunal) (Former Yugoslavia) Order 1996 (S.I. 1996/716), or
  - (b) the United Nations (International Tribunal) (Rwanda) Order 1996 (S.I. 1996/1296);
- and “the relevant International Tribunal”, in relation to such proceedings, means the international tribunal to which the Order in question relates.

##### *Delivery proceedings in England and Wales*

- 12 (1) Where—
- (a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and
  - (b) other delivery proceedings against that person are pending or in progress before a court in England and Wales,
- the Secretary of State shall consult the ICC and the relevant International Tribunal.
- (2) The Secretary of State shall inform the court of the request and of the outcome of the consultations.
- (3) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made under this Part of this Act.
- (4) If a delivery order is made under this Part of this Act and the other delivery proceedings are still pending or in progress, the Secretary of State—
- (a) shall consult the ICC before giving directions for the execution of the order, and
  - (b) may direct that the other delivery proceedings shall be discontinued.
- (5) Where the Secretary of State directs that the other delivery proceedings shall be discontinued, the court before which the proceedings are pending or in progress shall—
- (a) order their discontinuance, and
  - (b) make any other order necessary to enable the delivery order under this Part of this Act to be executed (including any necessary order as to the custody of the person concerned).
- (6) The discontinuance under this paragraph of other delivery proceedings in respect of an offence does not prevent the institution of fresh proceedings for a delivery order in respect of the offence.

##### *Delivery proceedings in Scotland*

- 13 (1) Where—

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- (a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and
  - (b) other delivery proceedings against that person are pending or in progress before a court in Scotland,the Secretary of State shall consult the ICC and the relevant International Tribunal.
- (2) The Secretary of State shall inform the Scottish Ministers of the request and of the outcome of the consultations and they shall inform the court.
- (3) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.
- (4) If a delivery order is made and the other delivery proceedings are still pending or in progress, the Secretary of State shall consult the ICC before giving directions for the execution of the order.

*Power to suspend or revoke previous delivery order*

- 14 (1) Where a court makes a delivery order under this Part of this Act in respect of a person in respect of whom a delivery order has been made under—
  - (a) the United Nations (International Tribunal) (Former Yugoslavia) Order 1996 (S.I. 1996/716), or
  - (b) the United Nations (International Tribunal) (Rwanda) Order 1996 (S.I. 1996/1296),the court may make any order necessary to enable the person to be delivered up under this Part of this Act.
- (2) The court may, in particular, suspend or revoke the other delivery order.

SCHEDULE 3

Section 28(3).

RIGHTS OF PERSONS DURING INVESTIGATION: ARTICLE 55

**ARTICLE 55**

**RIGHTS OF PERSONS DURING AN INVESTIGATION**

- 1 In respect of an investigation under this Statute, a person:
  - (a) Shall not be compelled to incriminate himself or herself or to confess guilt;
  - (b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
  - (c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and
  - (d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.

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- 2 Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:
- (a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;
  - (b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;
  - (c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and
  - (d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

#### SCHEDULE 4

Section 34(1).

#### TAKING OF FINGERPRINTS OR NON-INTIMATE SAMPLES

##### *Nomination of court to supervise taking of evidence*

- 1 (1) Where the Secretary of State receives a request from the ICC for assistance in obtaining evidence as to the identity of a person, he may nominate a court in England and Wales or Northern Ireland to supervise the taking of the person's fingerprints or a non-intimate sample (or both).
- (2) He shall not do so unless—
  - (a) he is satisfied that other means of identification have been tried and have proved inconclusive, and
  - (b) he has notified the ICC of that fact and the ICC has signified that it wishes to proceed with the request.

##### *Order to provide evidence*

- 2 (1) The nominated court may order the taking by a constable of the person's fingerprints or a non-intimate sample (or both).
- (2) In the case of a non-intimate sample—
  - (a) the sample must be a sufficient sample within the meaning of section 65 of the Police and Criminal Evidence Act 1984 (c. 60) or, in Northern Ireland, Article 53 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)), and
  - (b) section 63A(2) of that Act or, in Northern Ireland, Article 63A(2) of that Order applies as to the manner of taking the sample.
- (3) In the following provisions of this Schedule "the necessary identification evidence" means the fingerprints or sample (or both) required by the order of the nominated court.

*Status: Point in time view as at 31/10/2013.*

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### *Requirement to attend and provide evidence*

- 3 (1) The order of the nominated court may require the person to attend a police station to provide the necessary identification evidence.
- (2) Any such requirement—
- (a) shall give the person at least seven days within which he must so attend, and
  - (b) may direct him to attend at a specified time of day or between specified times of day.
- (3) If the person fails to attend in accordance with the order—
- (a) the nominated court may issue a warrant for his arrest, and
  - (b) the person may be detained for such period as is necessary to enable the necessary identification evidence to be taken.
- The court shall inform the person concerned of the effect of this sub-paragraph.
- (4) Sub-paragraphs (1) to (3) do not apply where the person concerned is in prison or is otherwise lawfully detained.
- In that case the necessary identification evidence may be taken at the place where he is detained or at such other place as the nominated court may direct.

### *Consent to taking of evidence*

- 4 (1) The necessary identification evidence may be taken—
- (a) with the appropriate consent given in writing, or
  - (b) without that consent, in accordance with paragraph 5.
- (2) In sub-paragraph (1) “the appropriate consent” has the meaning given by section 65 of the Police and Criminal Evidence Act 1984 or, in Northern Ireland, Article 53 of the Police and Criminal Evidence (Northern Ireland) Order 1989.
- (3) The court shall inform the person concerned of the effect of this paragraph.

### *Taking of evidence without consent*

- 5 (1) A constable may, if authorised by an officer of the rank of superintendent or above, take the necessary identification evidence without consent.
- (2) An officer may give an authorisation under sub-paragraph (1) orally or in writing, but if he gives it orally he shall confirm it in writing as soon as is reasonably practicable.
- (3) Before fingerprints or a sample are taken from a person upon an authorisation given under sub-paragraph (1), he shall be informed that the authorisation has been given.

### *Record of certain matters to be made*

- 6 (1) After fingerprints or a sample are taken under this Schedule, there shall be recorded as soon as is reasonably practicable any of the following which apply—
- (a) the fact that the appropriate consent has been given,
  - (b) any authorisation given under paragraph 5(1), and
  - (c) the fact that the person has been informed under paragraph 5(3) of the giving of such authorisation.

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- (2) A copy of the record shall be sent to the Secretary of State for transmission to the ICC together with the material obtained under this Schedule.

#### *Checking of fingerprints or samples*

- 7 (1) This paragraph applies to—
- (a) fingerprints or samples taken under this Schedule, and
  - (b) information derived from such samples.
- (2) The fingerprints, samples or information may be used only for the purpose of an investigation into a relevant offence.
- (3) In particular, a check may not be made against them under—
- (a) section 63A(1) [<sup>F12</sup>, (1E) or (1F)] of the Police and Criminal Evidence Act 1984 (c. 60) (checking of fingerprints and samples), or
  - (b) Article 63A(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (checking of fingerprints and samples),
- except for the purpose of an investigation into a relevant offence.
- (4) The fingerprints, samples or information may be checked, subject to sub-paragraph (2), against—
- (a) other fingerprints or samples taken under this Schedule or information derived from such samples,
  - (b) any of the fingerprints, samples and information mentioned in section 63A(1)(a) and (b) of the Police and Criminal Evidence Act 1984 (checking of fingerprints and samples), and
  - (c) any of the fingerprints, samples and information mentioned in Article 63A(1) (a) and (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (checking of fingerprints and samples).
- (5) For the purposes of this paragraph a “relevant offence” means an ICC crime or an offence under Part 5 of this Act.
- (6) Before fingerprints or a sample are taken from a person under this Schedule, he shall be informed that they may be used as mentioned in this paragraph.

#### **Textual Amendments**

**F12** Words in Sch. 4 para. 7(3)(a) inserted (E.W.N.I) (7.3.2011) by [Crime and Security Act 2010 \(c. 17\)](#), [ss. 5\(2\), 59\(1\)](#); [S.I. 2011/414](#), [art. 2\(b\)](#)

#### *Destruction of fingerprints and samples*

- [<sup>F138</sup> (1) This paragraph applies to the following material—
- (a) fingerprints and samples taken under this Schedule, and
  - (b) DNA profiles derived from such samples.
- (2) The material must be destroyed—
- (a) before the end of the period of 6 months beginning with the date on which the material was transmitted to the ICC (see paragraph 6(2)), or

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- (b) if later, as soon as it has fulfilled the purpose for which it was taken or derived.
- (3) If fingerprints are required to be destroyed by virtue of sub-paragraph (2), any copies of the fingerprints held by the police must also be destroyed.
- (4) If a DNA profile is required to be destroyed by virtue of sub-paragraph (2), no copy may be retained by the police except in a form which does not include information from which the person to whom the DNA profile relates can be identified.
- (5) In this paragraph—
  - “DNA profile” means any information derived from a DNA sample;
  - “DNA sample” means any material that has come from a human body and consists of or includes human cells.]

#### Textual Amendments

**F13** Sch. 4 para. 8 substituted (31.10.2013) by Protection of Freedoms Act 2012 (c. 9), s. 120, Sch. 1 para. 2 (with s. 97); S.I. 2013/1814, art. 2(k)

## SCHEDULE 5

Section 37

### INVESTIGATION OF PROCEEDS OF ICC CRIME

#### PART 1

##### PRODUCTION OR ACCESS ORDERS

###### *Application for order*

- 1 (1) An order under this Part of this Schedule may be made by a Circuit judge or, in Northern Ireland, a county court judge on an application made in pursuance of a direction by the Secretary of State under section 37(1) (investigation of proceeds of ICC crime).
- (2) Any such application—
  - (a) in England and Wales, may be made without notice and may be granted without a hearing; and
  - (b) in Northern Ireland, may be made on an ex parte application to a judge in chambers.

###### *Grounds for making order*

- 2 (1) The judge may make an order under this Part of this Schedule if he is satisfied that there are reasonable grounds for suspecting—
  - (a) that a specified person has benefited from an ICC crime, and
  - (b) that the material to which the application relates is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made.

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- (2) No such order shall be made if it appears to the judge that the material to which the application relates consists of or include items subject to legal privilege.
- (3) Paragraphs 3 and 4 specify the descriptions of order that may be made.

*Production or access orders: standard orders*

- 3 (1) The judge may order a specified person who appears to have in his possession, custody or power specified material, or material of a specified description, to which the application relates, either—
  - (a) to produce the material to a constable within a specified period for the constable to take away (a “production order”), or
  - (b) to give a constable access to the material within a specified period (an “access order”).
- (2) The specified period shall be seven days beginning with the date of the order unless it appears to the judge making the order that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (3) Where the judge makes an access order in relation to material on any premises he may, on the application of a constable, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.
- (4) In this paragraph “specified” means specified in the order.
- (5) Where a production or access order is made by virtue of paragraph 4 (special orders), the provisions of this paragraph have effect subject to the modifications specified in that paragraph.

*Production or access orders: special orders*

- 4 (1) A production or access order may be made in relation to a person who the judge thinks is likely to have material to which the application relates in his possession, custody or power within the period of 28 days beginning with the date of the order.
- (2) A production or access order may also be made in relation to material consisting of or including material which is expected to come into existence within that period.  
 In that case it must specify a person within sub-paragraph (1).
- (3) Where a production or access order is made by virtue of this paragraph—
  - (a) the order shall require the specified person to notify a named constable as soon as is reasonably practicable after any material to which the application relates comes into his possession, custody or power, and
  - (b) paragraph 3 has effect with the following modifications.
- (4) The modifications are—
  - (a) that the references in paragraph 3(1) to material which the specified person has in his possession, custody or power shall be read as references to the material that comes into his possession, custody or power, and
  - (b) that the reference in paragraph 3(2) to the date of the order shall be read as a reference to the date of the notification required by sub-paragraph (3)(a) above.



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(5) In this paragraph “specified” means specified in the order.

*Effect of order: general*

- 5 (1) An order under this Part of this Schedule has effect as if it were an order of the Crown Court.
- (2) Provision may be made by [<sup>F14</sup>Criminal Procedure Rules or, in Northern Ireland,] Crown Court Rules as to—
- (a) the discharge and variation of such orders, and
  - (b) proceedings relating to such orders.

**Textual Amendments**

**F14** Words in Sch. 5 para. 5(2) inserted (1.4.2005) by Courts Act 2003 (c. 39), s. 109(1), Sch. 8 para. 405; S.I. 2005/910, art. 3

*Effect of order: supplementary*

- 6 (1) The following provisions have effect with respect to the effect of an order under this Part of this Schedule.
- (2) Where the material to which the order relates consists of information contained in a computer—
- (a) a production order has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
  - (b) an access order has effect as an order to give access to the material in a form in which it is visible and legible.
- (3) An order under this Part of this Schedule does not confer any right to production of, or access to, items subject to legal privilege.
- (4) Subject to sub-paragraph (3), the order has effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.
- (5) For the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984 (c. 60) or, in Northern Ireland, Articles 23 and 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (access to, and copying and retention of, seized material) material produced in pursuance of an order under this Part of this Schedule shall be treated as if it were material seized by a constable.

*Order in relation to material in possession of government department*

- 7 (1) An order under this Part of this Schedule may be made in relation to material in the possession, custody or power of a government department.
- (2) An order so made—
- (a) shall be served as if the proceedings were civil proceedings against the department, and

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- (b) may require any officer of the department, whether named in the order or not, who may for the time being have in his possession, custody or power the material concerned, to comply with it.
- (3) In this paragraph “government department” means an authorised government department for the purposes of the Crown Proceedings Act 1947 (c. 44) or an authorised Northern Ireland department for the purposes of that Act as it applies to the Crown in right of Her Majesty’s Government in Northern Ireland.

## PART 2

### SEARCH WARRANTS

#### *Application for warrant*

- 8 A search warrant may be issued under this Part of this Schedule by a Circuit Judge or, in Northern Ireland, a county court judge on an application made in pursuance of a direction by the Secretary of State under section 37(1) (investigation of proceeds of ICC crime).

#### *Effect of warrant*

- 9 (1) A search warrant issued under this Part of this Schedule authorises any constable—
- (a) to enter and search the premises specified in the warrant, and
  - (b) to seize and retain any material found on the search that is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued.
- (2) The warrant does not confer any right to seize material that consists of or includes items subject to legal privilege.

#### *Grounds for issue of warrant*

- 10 (1) The judge may issue a search warrant under this Part of this Schedule in the following cases.
- (2) The first case is where the judge is satisfied that a production or access order made in relation to material on the premises has not been complied with.
- (3) The second case is where the judge is satisfied—
- (a) that there are reasonable grounds for suspecting that a specified person has benefited from an ICC crime,
  - (b) that there are grounds for making a production or access order (see paragraph 2) in relation to material on the premises, and
  - (c) that it would not be appropriate to make a production or access order in relation to the material for any of the following reasons.
- (4) Those reasons are—
- (a) that it is not practicable to communicate with any person entitled to produce the material,

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- (b) that it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
  - (c) that the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.
- (5) The third case is where the judge is satisfied—
- (a) that there are reasonable grounds for suspecting that a specified person has benefited from an ICC crime,
  - (b) that there are reasonable grounds for suspecting that there is material on the premises which cannot be particularised at the time of the application but which—
    - (i) relates to the specified person, or to the question whether that person has benefited from an ICC crime, or to any question as to the extent or whereabouts of the proceeds of an ICC crime, and
    - (ii) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, and
  - (c) that any of the following circumstances apply.
- (6) Those circumstances are—
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises,
  - (b) that entry to the premises will not be granted unless a warrant is produced, or
  - (c) that the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.

### PART 3

#### SUPPLEMENTARY PROVISIONS

- 11 In this Schedule—
- “constable” includes a person commissioned by the Commissioners of Customs and Excise; and
  - “items subject to legal privilege” and “premises” have the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60) or, in Northern Ireland, the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

### SCHEDULE 6

Section 38

#### FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

##### *Application for freezing order*

- 1 (1) A freezing order may be made by the High Court on an application in pursuance of a direction given by the Secretary of State under section 38.

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- (2) Any such application—
- (a) in England and Wales, may be made without notice and may be granted without a hearing; and
  - (b) in Northern Ireland, may be made on an ex parte application to a judge in chambers.

#### *Grounds for making order*

- 2 The court may make a freezing order if it is satisfied—
- (a) that a forfeiture order has been made in proceedings before the ICC, or
  - (b) that there are reasonable grounds for believing that a forfeiture order may be made in such proceedings,
- and that the property to which the order relates consists of or includes property that is or may be affected by such a forfeiture order.

#### *Effect of order*

- 3 (1) A “freezing order” is an order prohibiting any person from dealing with property specified in the order otherwise than in accordance with such conditions and exceptions as may be specified in the order.
- (2) A freezing order shall provide for notice to be given to persons affected by the order.

#### *Variation or discharge of order*

- 4 (1) A freezing order may be varied or discharged in relation to any property on the application of any person affected by the order.
- (2) A freezing order shall be discharged on the conclusion of the ICC proceedings in relation to which the order was made.

#### *Power to appoint receiver*

- 5 (1) The powers conferred by this paragraph may be exercised if a freezing order is in force.
- (2) The High Court may at any time appoint a receiver—
- (a) to take possession of any property specified in the order, and
  - (b) in accordance with the court’s directions, to manage or otherwise deal with the property in respect of which he is appointed,
- subject to such exceptions and conditions as may be specified by the court.
- (3) The High Court may require any person having possession of property in respect of which a receiver is appointed under this paragraph to give possession of it to the receiver.
- (4) The powers conferred on a receiver by this paragraph shall be exercised with a view to securing that the property specified in the order is available for satisfying the forfeiture order or, as the case may be, any forfeiture order that may be made in the ICC proceedings in relation to which the order was made.
- (5) A receiver appointed under this paragraph shall not be liable to any person in respect of any loss or damage resulting from any action taken by him which he believed on

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reasonable grounds that he was entitled to take, except in so far as the loss or damage is caused by his negligence.

*Seizure to prevent removal from jurisdiction*

- 6 (1) Where a freezing order has been made, a constable may, for the purpose of preventing any property specified in the order from being removed from the jurisdiction, seize the property.
- (2) The reference in sub-paragraph (1) to property being removed from the jurisdiction is to its being removed from England and Wales or Northern Ireland, as the case may be.
- (3) Property seized under this paragraph shall be dealt with in accordance with the directions of the High Court.

*Registered land: England and Wales*

- 7 (1) The Land Charges Act 1972 (c. 61) and the [F15Land Registration Act 2002] apply—
- (a) in relation to freezing orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and [F16, except that no notice may be entered in the register of title under the Land Registration Act 2002 in respect of such orders]
- (b) in relation to applications for freezing orders, as they apply in relation to other pending land actions.
- (2) F17 .....

**Textual Amendments**

- F15** Words in Sch. 6 para. 7 substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 133, Sch. 11 para. 40(a) (with s. 129); S.I. 2003/1725, art. 2(1)
- F16** Words in Sch. 6 para. 7(1)(a) inserted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 133, Sch. 11 para. 40(b) (with s. 129); S.I. 2003/1725, art. 2(1)
- F17** Sch. 6 para. 7(2) repealed (13.10.2003) by Land Registration Act 2002 (c. 9), s. 135, Sch. 13 (with ss. 129, 134, Sch. 12 para. 1); S.I. 2003/1725, art. 2(1)

*Registered land: Northern Ireland*

- 8 (1) The ICC shall be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.)) (cautions) as a person interested in relation to any registered land to which a freezing order or an application for such an order relates.
- (2) Upon being served with a copy of a freezing order or an application for such an order, the Registrar shall, in respect of any registered land to which the order or application relates, make an entry inhibiting any dealing with the land without the consent of the High Court.
- (3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) apply to an entry made under sub-paragraph (2) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.

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- (4) Where a freezing order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Act (Northern Ireland) 1970 (c. 25 (N.I.)), an order under paragraph 4 discharging the freezing order may direct that the entry be vacated.
- (5) In this paragraph—
- (a) “Registrar” and “entry” have the same meanings as in the Registration Act (Northern Ireland) 1970; and
  - (b) “registered land” has the meaning assigned to it by section 45(1)(a) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

*Bankruptcy: England and Wales*

- 9 (1) Where a person is adjudged bankrupt in England and Wales—
- (a) property for the time being subject to a freezing order, or an order having the like effect in Scotland, made before the order adjudging him bankrupt, and
  - (b) any proceeds of property realised by virtue of paragraph 5(2) for the time being in the hands of a receiver appointed under that paragraph,
- is excluded from the bankrupt’s estate for the purposes of Part 9 of the Insolvency Act 1986 (c. 45).
- (2) Where a person has been adjudged bankrupt in England and Wales, the powers conferred on a receiver appointed under paragraph 5 above shall not be exercised in relation to—
- (a) property for the time being comprised in the bankrupt’s estate for the purposes of that Part of that Act;
  - (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under section 307, 308 or 308A of that Act (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement and certain tenancies); and
  - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of that Act.
- (3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of that Act and any property of the debtor is subject to a freezing order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the freezing order.
- (5) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 29th December 1986 (the date on which the Insolvency Act 1986 (c. 45) came into force), this paragraph shall have effect with the following modifications—
- (a) for references to the bankrupt’s estate for the purposes of Part 9 of that Act there shall be substituted references to the property of the bankrupt for the purposes of the Bankruptcy Act 1914 (c. 59);
  - (b) for references to the Act of 1986 and sections 280(2)(c) and 286 of that Act there shall be respectively substituted references to the Act of 1914 and to sections 26(2) and 8 of that Act;

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- (c) the references in sub-paragraph (4) to an interim receiver appointed as there mentioned include, where a receiving order has been made, a reference to the receiver constituted by virtue of section 7 of the Act of 1914; and
- (d) sub-paragraph (2)(b) shall be omitted.

#### *Bankruptcy: Northern Ireland*

- 10 (1) Where a person is adjudged bankrupt in Northern Ireland—
- (a) property for the time being subject to a freezing order, or an order having the like effect in Scotland, made before the order adjudging him bankrupt, and
  - (b) any proceeds of property realised by virtue of paragraph 5(2) for the time being in the hands of a receiver appointed under that paragraph,
- is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (2) Where a person has been adjudged bankrupt in Northern Ireland, the powers conferred on a receiver appointed under paragraph 5 above shall not be exercised in relation to—
- (a) property for the time being comprised in the bankrupt's estate for the purposes of that Part of that Order;
  - (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under Article 280 or 281 of that Order (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement); and
  - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under Article 254(2)(c) of that Order.
- (3) Nothing in that Order shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Where, in the case of a debtor, an interim receiver stands appointed under Article 259 of that Order and any property of the debtor is subject to a freezing order, the powers conferred on the receiver by virtue of that Order do not apply to property for the time being subject to the freezing order.
- (5) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 1st October 1991 (the date on which the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) came into force), this paragraph shall have effect with the following modifications—
- (a) for references to the bankrupt's estate for the purposes of Part IX of that Order there shall be substituted references to the property of the bankrupt for the purposes of the Bankruptcy Acts (Northern Ireland) 1857 to 1980;
  - (b) sub-paragraph (2)(b) shall be omitted;
  - (c) for the reference in sub-paragraph (2)(c) to Article 254(2)(c) of that Order there shall be substituted a reference to Articles 28(4), (5)(c) and (11) and 30(6)(c) of the Bankruptcy Amendment (Northern Ireland) Order 1980 (S.I. 1980/561 (N.I. 4));
  - (d) for the reference in sub-paragraph (3) to that Order there shall be substituted a reference to the Bankruptcy Acts (Northern Ireland) 1857 to 1980; and
  - (e) for the reference in sub-paragraph (4) to an interim receiver appointed under Article 259 of that Order there shall be substituted a reference to a

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receiver or manager appointed under section 68 of the Bankruptcy (Ireland) Amendment Act 1872 (c. 58).

*Winding up: England and Wales*

- 11 (1) Where an order for the winding up of a company has been made under the Insolvency Act 1986 (c. 45), or a resolution has been passed by a company for voluntary winding up under that Act, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—
- (a) property for the time being subject to a freezing order, or an order having the like effect in Scotland, made before the relevant time, and
  - (b) any proceeds of property realised by virtue of paragraph 5(2) for the time being in the hands of a receiver appointed under that paragraph.
- (2) Where such an order has been made or such a resolution has been passed, the powers conferred on a receiver appointed under paragraph 5 shall not be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable—
- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors; or
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) In this paragraph—
- “company” means any company which may be wound up under the Insolvency Act 1986; and
- “the relevant time” means—
- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
  - (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
  - (c) in any other case where such an order has been made, the time of the making of the order.
- (5) In any case in which a winding up of a company commenced or is treated as having commenced before 29th December 1986 (the date on which the Insolvency Act 1986 (c. 45) came into operation), this paragraph shall have effect with the substitution for references to that Act of references to the Companies Act 1985 (c. 6).

*Winding up: Northern Ireland*

- 12 (1) Where an order for the winding up of a company has been made under the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or a resolution has been passed by a company for voluntary winding up under that Order, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—



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- (a) property for the time being subject to a freezing order, or an order having the like effect in Scotland, made before the relevant time, and
  - (b) any proceeds of property realised by virtue of paragraph 5(2) for the time being in the hands of a receiver appointed under that paragraph.
- (2) Where such an order has been made or such a resolution has been passed, the powers conferred on a receiver appointed under paragraph 5 shall not be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable—
  - (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors; or
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (3) Nothing in the Insolvency (Northern Ireland) Order 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) In this paragraph—

“company” means any company which may be wound up under the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)); and

“the relevant time” means—

  - (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
  - (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
  - (c) in any other case where such an order has been made, the time of the making of the order.
- (5) In any case in which a winding up of a company commenced or is treated as having commenced before 1st October 1991 (the date on which the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) came into operation), this paragraph shall have effect with the substitution for references to that Order of references to the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).

#### *Protection of insolvency practitioners*

- 13 (1) This paragraph applies where an insolvency practitioner seizes or disposes of property which is subject to a freezing order and—
  - (a) he reasonably believes that he is entitled to do so in the exercise of his functions, and
  - (b) he would be so entitled if the property were not subject to a freezing order.
- (2) The insolvency practitioner shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence.
- (3) The insolvency practitioner shall have a lien on the property seized or the proceeds of its sale—

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- (a) for such of his expenses as were incurred in connection with the insolvency proceedings in relation to which the seizure or disposal purported to take place, and
  - (b) for so much of his remuneration as may be reasonably assigned for his acting in connection with those proceedings.
- (4) Sub-paragraphs (1) to (3) are without prejudice to the generality of any provision contained in the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989.
- (5) In this paragraph “insolvency practitioner”, in any part of the United Kingdom, means a person acting as an insolvency practitioner in that or any other part of the United Kingdom.
- (6) For the purpose of sub-paragraph (5) any question whether a person is acting as an insolvency practitioner in England and Wales or in Scotland shall be determined in accordance with section 388 of the Insolvency Act 1986, except that—
- (a) the reference in section 388(2)(a) to a permanent or interim trustee in the sequestration of a debtor’s estate shall be taken to include a reference to a trustee in sequestration,
  - (b) section 388(5) shall be disregarded, and
  - (c) the expression shall also include the Official Receiver acting as receiver or manager of property.
- (7) For the purpose of sub-paragraph (5) any question whether a person is acting as an insolvency practitioner in Northern Ireland shall be determined in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989, except that—
- (a) Article 3(5) shall be disregarded, and
  - (b) the expression shall also include the Official Receiver acting as receiver or manager of property.

### *Interpretation*

- 14 (1) For the purposes of this Schedule—
- (a) “property” includes money and all other property, real or personal, heritable or moveable, and including things in action and other intangible or incorporeal property; and
  - (b) “dealing with property” includes (without prejudice to the generality of that expression)—
    - (i) where a debt is owed to a person, making a payment to any person in reduction of the amount of the debt, and
    - (ii) removing the property from England and Wales or Northern Ireland.
- (2) For the purposes of this Schedule ICC proceedings are concluded—
- (a) when there is no further possibility of a forfeiture order being made in the proceedings; or
  - (b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all the property liable to be recovered, or otherwise).

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## SCHEDULE 7

Section 42

### DOMESTIC PROVISIONS NOT APPLICABLE TO ICC PRISONERS

#### *Introduction*

- 1 The provisions specified in this Schedule do not apply in relation to a person detained in England and Wales or Northern Ireland in pursuance of a sentence of the ICC.

#### *Provisions affecting length of sentence*

- 2 (1) The following provisions of the law of England and Wales do not apply—
- (a) section 24 of the Prison Act 1952 (c. 52) (calculation of term of sentence: meaning of “month”);
  - (b) section 49(2) of that Act (deduction of periods unlawfully at large);
  - (c) section 23(3) of the Criminal Justice Act 1961 (c. 39) (discharge at weekend or on a holiday);
  - [<sup>F18</sup>(d) [<sup>F19</sup>sections 240ZA] and 240A of the Criminal Justice Act 2003 (crediting of periods spent on remand in custody or on bail subject to certain types of condition: terms of imprisonment and detention).]
- (2) The following provisions of the law of Northern Ireland do not apply—
- any provision of rules under section 13 of the Prisons (Northern Ireland) Act 1953 (c. 18 (N.I.)) (prison rules) as to—
- (a) remission, or
  - (b) discharge at a weekend or on a holiday;
- section 38(2) of that Act (deduction of periods unlawfully at large);  
section 26(2) of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29 (N.I.)) (taking into account of time spent in custody).

#### **Textual Amendments**

**F18** Sch. 7 para. 2(1)(d) substituted (3.11.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [ss. 22\(7\)](#), [153\(7\)](#); [S.I. 2008/2712](#), [art. 2](#), [Sch. para. 2](#)

**F19** Words in Sch. 7 para. 2(1)(d) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [s. 151\(1\)](#), [Sch. 13 para. 13](#); [S.I. 2012/2906](#), [art. 2\(k\)](#)

#### *Provisions relating to early release or release on licence*

- 3 (1) The following provisions of the law of England and Wales do not apply—
- section 28 of the Prison Act 1952 (c. 52) (power to discharge prisoners temporarily on grounds of ill health);
  - any provision of rules under section 47 of that Act (prison rules) permitting temporary release on licence;
  - section 32 of the Criminal Justice Act 1982 (c. 48) or [<sup>F20</sup>[<sup>F21</sup>sections 243A] to 264 of the Criminal Justice Act 2003](early release of prisoners);
  - Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43) (release on licence of life prisoners).
- (2) The following provisions of the law of Northern Ireland do not apply—

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any provision of rules under section 13 of the Prison Act (Northern Ireland) 1953 (c.18 (N.I.)) (prison rules) permitting temporary release on licence;  
 [F<sup>22</sup>the Life Sentences (Northern Ireland) Order 2001] (release on licence of life prisoners);  
 [F<sup>23</sup>section 24 of the Prison Act (Northern Ireland) 1953] (power to discharge prisoners temporarily on grounds of ill health).  
 [F<sup>24</sup>Chapter 4 of Part 2 to the Criminal Justice (Northern Ireland) Order 2008 (release on licence of certain prisoners).]

#### Textual Amendments

- F20** Words in Sch. 7 para. 3(1) substituted (4.4.2005) by Criminal Justice Act 2003 (c. 44), s. 304, Sch. 32 Pt. 1 para. 139(3); S.I. 2005/950, art. 2(1) (subject to Sch. 2 (as amended by S.I. 2005/2122, art. 2))
- F21** Words in Sch. 7 para. 3(1) substituted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), Sch. 14 para. 4; S.I. 2012/2906, art. 2(1)
- F22** Words in Sch. 7 para. 3(2) substituted (1.9.2001) by S.I. 2001/2565, arts. 1(3), 5(a); S.I. 2001/2161, art. 2
- F23** Words in Sch. 7 para. 3(2) substituted (1.9.2001) by S.I. 2001/2565, arts. 1(3), 5(b); S.I. 2001/2161, art. 2
- F24** Words in Sch. 7 para. 3(2) inserted (15.5.2008) by Criminal Justice (Northern Ireland) Consequential Amendments Order 2008 (S.I. 2008/1241), arts. 1(2), 5(2) (see S.R. 2008/217, art. 2, Sch.)

## SCHEDULE 8

Section 50(6)

### GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES: ARTICLES 6 TO 9

#### ARTICLE 6

##### GENOCIDE

For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

#### ARTICLE 7

##### CRIMES AGAINST HUMANITY

- 1 For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

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- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2 For the purpose of paragraph 1:

- (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law .;
- (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

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- (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

- 3 For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

## ARTICLE 8

### WAR CRIMES

- 2 For the purpose of this Statute, “war crimes” means:
- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
- (i) Wilful killing;
  - (ii) Torture or inhuman treatment, including biological experiments;
  - (iii) Wilfully causing great suffering, or serious injury to body or health;
  - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
  - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
  - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
  - (vii) Unlawful deportation or transfer or unlawful confinement;
  - (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

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- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, or of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- .....
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy as defined in article 7, paragraph 2(f), enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

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- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
  - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
  - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - (iii) Taking of hostages;
  - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.
- (d) Paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic



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- monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
  - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
  - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
  - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (ix) Killing or wounding treacherously a combatant adversary;
  - (x) Declaring that no quarter will be given;
  - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
  - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.
- (f) Paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

## ARTICLE 9

### ELEMENTS OF CRIMES

- 1 Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.
- 2 Amendments to the Elements of Crimes may be proposed by:
  - (a) Any State Party;
  - (b) The judges acting by an absolute majority;
  - (c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.
- 3 The Elements of Crimes and amendments thereto shall be consistent with this Statute.

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## SCHEDULE 9

Sections 54(7) and 61(7)

### OFFENCES AGAINST THE ICC: ARTICLE 70

#### ARTICLE 70

##### OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE

1 The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:

- (a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1 to tell the truth;
- (b) Presenting evidence that the party knows is false or forged;
- (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
- (d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;
- (e) Retaliating against an official of the Court on account of duties performed by that or another official;
- (f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.

....

4 (a) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;

....

##### NOTE:

Article 69.1, referred to in article 70.1(a), provides as follows:

“1 Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.”.

## F<sup>25</sup> SCHEDULE 10

Section 83

### REPEALS

#### **Extent Information**

**E1** Schedule 10 extends to the whole of the UK, except the repeal of certain provisions of the Genocide Act 1969 c.12 which do not extend to Scotland. See s. 79(01)(d)(02)

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### Textual Amendments

- F25** Sch. 10 entries repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4

### Modifications etc. (not altering text)

- C3** Sch. 10 extended (IoM) (1.4.2004) by [S.I. 2004/714](#), [art. 2](#)
- C4** Sch. 10 extended (Guernsey) (with modifications) (15.1.2011) by [The Geneva Conventions Act \(Guernsey\) Order 2010 \(S.I. 2010/2965\)](#), arts. 1, 3, [Sch. 1](#)

<i>Short title and chapter</i>	<i>Extent of repeal</i>
<b>F25</b>	<b>F25</b>
...	...
<b>F25</b>	<b>F25</b>
...	...
The Geneva Conventions Act 1957 (c. 52)	In section 1— (a) in subsection (1) the words from “and on conviction on indictment” to the end; (b) subsections (3) to (5). In section 7(1), the definition of “court”.
<b>F25</b>	<b>F25</b>
...	...
The Genocide Act 1969 (c. 12)	The whole Act.
The Geneva Conventions (Amendment) Act 1995 (c. 27)	Section 1(4) and (5).

**Status:**

Point in time view as at 31/10/2013.

**Changes to legislation:**

International Criminal Court Act 2001 is up to date with all changes known to be in force on or before 10 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.