



# International Criminal Court Act 2001

## 2001 CHAPTER 17

### PART 5

#### OFFENCES UNDER DOMESTIC LAW

##### *Introduction*

#### **50 Meaning of “genocide”, “crime against humanity” and “war crime”**

(1) In this Part—

- “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.

(2) In interpreting and applying the provisions of those articles the court shall take into account—

- (a) any relevant Elements of Crimes adopted in accordance with article 9, and
- (b) until such time as Elements of Crimes are adopted under that article, any relevant Elements of Crimes contained in the report of the Preparatory Commission for the International Criminal Court adopted on 30th June 2000.

(3) The Secretary of State shall set out in regulations the text of the Elements of Crimes referred to in subsection (2), as amended from time to time.

The regulations shall be made by statutory instrument which shall be laid before Parliament after being made.

(4) The articles referred to in subsection (1) shall for the purposes of this Part be construed subject to and in accordance with any relevant reservation or declaration made by the United Kingdom when ratifying any treaty or agreement relevant to the interpretation of those articles.

Her Majesty may by Order in Council—

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- (a) certify that such a reservation or declaration has been made and the terms in which it was made;
  - (b) if any such reservation or declaration is withdrawn (in whole or part), certify that fact and revoke or amend any Order in Council containing the terms of that reservation or declaration.
- (5) In interpreting and applying the provisions of the articles referred to in subsection (1) the court shall take into account any relevant judgment or decision of the ICC.

Account may also be taken of any other relevant international jurisprudence.

- (6) The relevant provisions of the articles of the ICC Statute referred to this section are set out in Schedule 8 to this Act.

No account shall be taken for the purposes of this Part of any provision of those articles omitted from the text set out in that Schedule.

#### **Commencement Information**

- II** S. 50 wholly in force at 1.9.2001; s. 50 not in force at Royal Assent see s. 82; s. 50(3)(4) 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); s. 50(1)(2)(5)(6) in force at 1.9.2001 by S.I. 2001/2161, art. 2

### *England and Wales*

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

- (1) It is an offence against the law of England and Wales for a person to commit genocide, a crime against humanity or a war crime.
- (2) This section applies to acts committed—
- (a) in England or Wales, or
  - (b) outside the United Kingdom by a United Kingdom national, a United Kingdom resident or a person subject to UK service jurisdiction.

#### **52 Conduct ancillary to genocide, etc. committed outside jurisdiction**

- (1) It is an offence against the law of England and Wales for a person to engage in conduct ancillary to an act to which this section applies.
- (2) This section applies to an act that if committed in England or Wales would constitute—
- (a) an offence under section 51 (genocide, crime against humanity or war crime), or
  - (b) an offence under this section,
- but which, being committed (or intended to be committed) outside England and Wales, does not constitute such an offence.
- (3) The reference in subsection (1) to conduct ancillary to such an act is to conduct that would constitute an ancillary offence in relation to that act if the act were committed in England or Wales.
- (4) This section applies where the conduct in question consists of or includes an act committed—

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- (a) in England or Wales, or
- (b) outside the United Kingdom by a United Kingdom national, a United Kingdom resident or a person subject to UK service jurisdiction.

### 53 Trial and punishment of main offences

- (1) The following provisions apply in relation to—
    - (a) offences under section 51 (genocide, crimes against humanity and war crimes),
    - (b) offences under section 52 (conduct ancillary to genocide, etc. committed outside jurisdiction), and
    - (c) offences ancillary to an offence within paragraph (a) or (b) above.
  - (2) The offence is triable only on indictment.
  - (3) Proceedings for an offence shall not be instituted except by or with the consent of the Attorney General.
  - (4) If the offence is not committed in England or Wales—
    - (a) proceedings may be taken, and
    - (b) the offence may for incidental purposes be treated as having been committed, in any place in England or Wales.
  - (5) 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.

In this subsection “murder” means the killing of a person in such circumstances as would, if committed in England or Wales, constitute murder.
  - (6) In any other case a person convicted of an offence is liable to imprisonment for a term not exceeding 30 years.
- [<sup>F1</sup>(7) Subsections (5) and (6) are subject to section 65B (restriction of penalties in relation to retrospective application of certain offences).]

#### Textual Amendments

- F1** S. 53(7) added (6.4.2010) by Coroners and Justice Act 2009 (c. 25), ss. 70(2), 182(5) (with s. 180, Sch. 22); S.I. 2010/816, art. 2, Sch. para. 3

### 54 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 in relation to the ICC) may be dealt with as for the corresponding domestic offence committed in relation to a superior court in England and Wales.
- (2) In interpreting and applying the provisions of article 70.1 the court shall take into account any relevant judgment or decision of the ICC.

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Account may also be taken of any other relevant international jurisprudence.

- (3) The corresponding domestic offences are—
- (a) in relation to article 70.1(a) (giving false testimony when under an obligation to tell the truth), an offence against section 1(1) of the Perjury Act 1911 (c. 6);
  - (b) in relation to article 70.1(c) (interference with witness or evidence), an offence against section 51 of the Criminal Justice and Public Order Act 1994 (c. 33) [F2, an offence under the Bribery Act 2010 or (as the case may be) an offence ] at common law;
  - (c) in relation to article 70.1(b) or (d) to (f) (other offences), an offence at common law [F3 or (as the case may be) under the Bribery Act 2010].
- (4) 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 domestic offences apply to acts committed—
- (a) in England or Wales, or
  - (b) outside the United Kingdom by a United Kingdom national, a United Kingdom resident or a person subject to UK service jurisdiction.
- (5) Proceedings for an offence under this section, or for an offence ancillary to such an offence, shall not be instituted except by or with the consent of the Attorney General.
- (6) If an offence under this section, or an offence ancillary to such an offence, is not committed in England or Wales—
- (a) proceedings may be taken, and
  - (b) the offence may for incidental purposes be treated as having been committed, in any place in England or Wales.
- (7) The relevant provisions of article 70.1 are set out in Schedule 9 to this Act.

#### Textual Amendments

- F2** Words in s. 54(3)(b) substituted (1.7.2011) by Bribery Act 2010 (c. 23), s. 19(1), **Sch. 1 para. 4(a)** (with ss. 16, 19(5)); S.I. 2011/1418, art. 2
- F3** Words in s. 54(3)(c) inserted (1.7.2011) by Bribery Act 2010 (c. 23), s. 19(1), **Sch. 1 para. 4(b)** (with ss. 16, 19(5)); S.I. 2011/1418, art. 2

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

- C1** S. 54(4) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by **The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), art. 1(3), Sch. 1 para. 48(2)**

## 55 Meaning of “ancillary offence”

- (1) References in this Part to an ancillary offence under the law of England and Wales are to—
- (a) aiding, abetting, counselling or procuring the commission of an offence,
  - (b) inciting a person to commit an offence,
  - (c) attempting or conspiring to commit an offence, or
  - (d) assisting an offender or concealing the commission of an offence.

*Changes to legislation: There are currently no known outstanding effects for the International Criminal Court Act 2001, Part 5. (See end of Document for details)*

(2) In subsection (1)(a) the reference to aiding, abetting, counselling or procuring is to conduct that in relation to an indictable offence would be punishable under section 8 of the Accessories and Abettors Act 1861 (c. 94).

<sup>F4</sup>(3) .....

(4) In subsection (1)(c)—

- (a) the reference to an attempt is to conduct amounting to an offence under section 1 of the Criminal Attempts Act 1981 (c. 47); and
- (b) the reference to conspiracy is to conduct amounting to an offence of conspiracy under section 1 of the Criminal Law Act 1977 (c. 45).

(5) In subsection (1)(d)—

- (a) the reference to assisting an offender is to conduct that in relation to [<sup>F5</sup>a relevant offence] would amount to an offence under section 4(1) of the Criminal Law Act 1967 (c. 58); and
- (b) the reference to concealing an offence is to conduct that in relation to [<sup>F6</sup>a relevant offence] would amount to an offence under section 5(1) of that Act.

#### Textual Amendments

- F4** S. 55(3) repealed (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 6 para. 61(2), **Sch. 14** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)(i)
- F5** Words in s. 55(5)(a) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 111, 178(8), **Sch. 7 para. 49(3)**; S.I. 2005/3495, art. 2(1)(m) (subject to art. 2(2))
- F6** Words in s. 55(5)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 111, 148(8), **Sch. 7 para. 49(3)**; S.I. 2005/3495, art. 2(1)(m) (subject to art. 2(2))

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

- C2** S. 55(1)(b) modified (prosp.) by Serious Crime Act 2007, ss. 63(1)(2), 94, {Sch. 6 para. 42} (with Sch. 13 para. 5)
- C3** S. 55(1)(b) modified (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 6 para. 42** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

## 56 Saving for general principles of liability, etc

(1) In determining whether an offence under this Part has been committed the court shall apply the principles of the law of England and Wales.

(2) Nothing in this Part 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), or
- (b) offences ancillary to offences under this Part (wherever committed).

## 57 Protection of victims and witnesses

(1) The enactments specified below (which make provision for the protection of victims and witnesses of certain offences) have effect—

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*Changes to legislation: There are currently no known outstanding effects for the International Criminal Court Act 2001, Part 5. (See end of Document for details)*

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- (a) as if any reference in those provisions to a specific substantive offence included an offence under section 51 involving conduct constituting that offence; and
  - (b) as if any reference in those provisions to a specific ancillary offence included—
    - (i) that ancillary offence in relation to an offence under section 51 involving conduct constituting the substantive offence in question, and
    - (ii) an offence under section 52 involving conduct constituting that ancillary offence in relation to an act to which that section applies involving conduct constituting the substantive offence in question.
- (2) The enactments are—
- the Sexual Offences (Amendment) Act 1976 (c. 82) and the Sexual Offences (Amendment) Act 1992 (c.34) (protection of victims of sexual offences);
  - Chapters 1 to 3 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (protection of witnesses and complainants); and
  - the Sexual Offences (Protected Material) Act 1997 (c. 39) (restrictions on access by defendants and others to material disclosed in connection with proceedings for offences).
- (3) In subsection (1) above—
- (a) “substantive offence” means an offence other than an ancillary offence; and
  - (b) the reference to conduct constituting an offence is to conduct that would constitute that offence if committed in England and Wales.

*Northern Ireland*

**58 Genocide, crimes against humanity and war crimes**

- (1) It is an offence against the law of Northern Ireland for a person to commit genocide, a crime against humanity or a war crime.
- (2) This section applies to acts committed—
  - (a) in Northern Ireland, or
  - (b) outside the United Kingdom by a United Kingdom national or a United Kingdom resident.

**59 Conduct ancillary to genocide, etc. committed outside jurisdiction**

- (1) It is an offence against the law of Northern Ireland for a person to engage in conduct ancillary to an act to which this section applies.
- (2) This section applies to an act that if committed in Northern Ireland would constitute—
  - (a) an offence under section 58 (genocide, crime against humanity or war crime), or
  - (b) an offence under this section,
 but which, being committed (or intended to be committed) outside Northern Ireland, does not constitute such an offence.

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*Changes to legislation:* There are currently no known outstanding effects for the International Criminal Court Act 2001, Part 5. (See end of Document for details)

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- (3) The reference in subsection (1) to conduct ancillary to such an act is to conduct that would constitute an ancillary offence in relation to that act if the act were committed in Northern Ireland.
- (4) This section applies where the conduct in question consists of or includes an act committed—
  - (a) in Northern Ireland, or
  - (b) outside the United Kingdom by a United Kingdom national or a United Kingdom resident.

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

- (1) The following provisions apply in relation to—
  - (a) offences under section 58 (genocide, crimes against humanity and war crimes),
  - (b) offences under section 59 (conduct ancillary to genocide, etc. committed outside jurisdiction), and
  - (c) offences ancillary to an offence within paragraph (a) or (b) above.
- (2) The offence is triable only on indictment.
- (3) Proceedings for an offence shall not be instituted except by or with the consent of the Attorney General for Northern Ireland.
- (4) If the offence is not committed in Northern Ireland—
  - (a) proceedings may be taken, and
  - (b) the offence may for incidental purposes be treated as having been committed, in any place in Northern Ireland.
- (5) 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.

In this subsection “murder” means the killing of a person in such circumstances as would, if committed in Northern Ireland, constitute murder.
- (6) In any other case a person convicted of an offence is liable to imprisonment for a term not exceeding 30 years.
- [<sup>F7</sup>(7) Subsections (5) and (6) are subject to section 65B (restriction of penalties in relation to retrospective application of certain offences).]

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### **Textual Amendments**

- F7** S. 60(7) added (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), [ss. 70\(2\)](#), [182\(5\)](#) (with [s. 180](#), [Sch. 22](#)); [S.I. 2010/816](#), [art. 2](#), [Sch. para. 3](#)

*Changes to legislation: There are currently no known outstanding effects for the International Criminal Court Act 2001, Part 5. (See end of Document for details)*

## 61 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 in relation to the ICC) may be dealt with as for the corresponding domestic offence committed in relation to a superior court in Northern Ireland.

(2) In interpreting and applying the provisions of article 70.1 the court shall take into account any relevant judgment or decision of the ICC.

Account may also be taken of any other relevant international jurisprudence.

(3) The corresponding domestic offences are—

- (a) in relation to article 70.1(a) (giving false testimony when under an obligation to tell the truth), an offence against Article 3(1) of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) ;
- (b) in relation to article 70.1(b) to (f) (other offences), an offence at common law [<sup>F8</sup>or (as the case may be) under the Bribery Act 2010].

(4) 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 domestic offences apply to acts committed—

- (a) in Northern Ireland, or
- (b) outside the United Kingdom by a United Kingdom national or a United Kingdom resident.

(5) Proceedings for an offence under this section, or for an offence ancillary to such an offence, shall not be instituted except by or with the consent of the Attorney General for Northern Ireland.

(6) If an offence under this section, or an offence ancillary to such an offence, is not committed in Northern Ireland—

- (a) proceedings may be taken, and
- (b) the offence may for incidental purposes be treated as having been committed, in any place in Northern Ireland.

(7) The relevant provisions of article 70.1 are set out in Schedule 9 to this Act.

### Textual Amendments

**F8** Words in s. 61(3)(b) inserted (1.7.2011) by Bribery Act 2010 (c. 23), s. 19(1), Sch. 1 para. 5 (with ss. 16, 19(5)); S.I. 2011/1418, art. 2

## 62 Meaning of “ancillary offence”

(1) References in this Part to an ancillary offence under the law of Northern Ireland are to—

- (a) aiding, abetting, counselling or procuring the commission of an offence,
- (b) inciting a person to commit an offence,
- (c) attempting or conspiring to commit an offence, or
- (d) assisting an offender or concealing the commission of an offence.



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(2) In subsection (1)(a) the reference to aiding, abetting, counselling or procuring is to conduct that in relation to an indictable offence would be punishable under section 8 of the Accessories and Abettors Act 1861 (c. 94).

<sup>F9</sup>(3) .....

(4) In subsection (1)(c)—

- (a) the reference to an attempt is to conduct amounting to an offence under Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120 (N.I. 13)); and
- (b) the reference to conspiracy is to conduct amounting to an offence of conspiracy under Article 9 of that Order.

(5) In subsection (1)(d)—

- (a) the reference to assisting an offender is to conduct that in relation to [<sup>F10</sup>a relevant offence] would amount to an offence under section 4(1) of the Criminal Law Act (Northern Ireland) 1967 (c. 18 (N.I.)); and
- (b) the reference to concealing an offence is to conduct that in relation to [<sup>F10</sup>a relevant offence] would amount to an offence under section 5(1) of that Act.

#### Textual Amendments

- F9** S. 62(3) repealed (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 6 para. 61(3), **Sch. 14** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)(i)
- F10** Words in s. 62(5)(a)(b) substituted (1.3.2007) by The Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I. 2)), arts. 1, 15, **Sch. 1 para. 36(2)**

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

- C4** S. 62(1)(b) modified (prosp.) by Serious Crime Act 2007 (c. 27), ss. 63(1)(2), 94, **Sch. 6 para. 42** (with Sch. 13 para. 5)
- C5** S. 62(1)(b) modified (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 6 para. 42** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

### 63 Saving for general principles of liability, etc

- (1) In determining whether an offence under this Part has been committed the court shall apply the principles of the law of Northern Ireland.
- (2) Nothing in this Part 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), or
  - (b) offences ancillary to offences under this Part (wherever committed).

### 64 Protection of victims and witnesses

- (1) The enactments specified below (which make provision for the protection of victims and witnesses of certain offences) have effect—
  - (a) as if any reference in those provisions to a specific substantive offence included an offence under section 58 involving conduct constituting that offence; and

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- (b) as if any reference in those provisions to a specific ancillary offence included—
  - (i) that ancillary offence in relation to an offence under section 58 involving conduct constituting the substantive offence in question, and
  - (ii) an offence under section 59 involving conduct constituting that ancillary offence in relation to an act to which that section applies involving conduct constituting the substantive offence in question.

(2) The enactments are—

the Sexual Offences (Northern Ireland) Order 1978 (S.I. 1978/460 (N.I. 15)) and the Sexual Offences (Amendment) Act 1992 (c. 34) (protection of victims of sexual offences); and

Parts 1 to 4 of the Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789 (N.I. 8)) (protection of witnesses and complainants).

Until the commencement of the amendments to the Sexual Offences (Amendment) Act 1992 (c. 34) made by Schedule 2 to the Youth Justice and Criminal Evidence Act 1999, the reference above to the 1992 Act shall be read as a reference to Part 3 of the Criminal Justice (Northern Ireland) Order 1994.

(3) In subsection (1) above—

- (a) “substantive offence” means an offence other than an ancillary offence; and
- (b) the reference to conduct constituting an offence is to conduct that would constitute that offence if committed in Northern Ireland.

#### *Supplementary provisions*

### **65 Responsibility of commanders and other superiors**

(1) This section applies in relation to—

- (a) offences under this Part, and
- (b) offences ancillary to such offences.

(2) A military commander, or a person effectively acting as a military commander, is 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—

- (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), a superior is 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,

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- (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 is regarded as aiding, abetting, counselling or procuring the commission of the offence.
- (5) In interpreting and applying the provisions of this section (which corresponds to article 28) the court shall take into account any relevant judgment or decision of the ICC.
- Account may also be taken of any other relevant international jurisprudence.
- (6) Nothing in this section shall be read as restricting or excluding—
- (a) any liability of the commander or superior apart from this section, or
  - (b) the liability of persons other than the commander or superior.

#### **[<sup>F11</sup>65A Retrospective application of certain offences**

- (1) Sections 51 and 58 apply to acts committed on or after 1 January 1991.
- (2) But those sections do not apply to a crime against humanity, or a war crime within article 8.2(b) or (e), committed by a person before 1 September 2001 unless, at the time the act constituting that crime was committed, the act amounted in the circumstances to a criminal offence under international law.
- (3) Section 52 applies to conduct in which a person engaged on or after 1 January 1991, and in subsections (2) and (3) of that section references to an offence include an act or conduct which would not constitute an offence under the law of England and Wales but for this section.
- (4) Section 59 applies to conduct in which a person engaged on or after 1 January 1991, and in subsections (2) and (3) of that section references to an offence include an act or conduct which would not constitute an offence under the law of Northern Ireland but for this section.
- (5) Any enactment or rule of law relating to an offence ancillary to a relevant Part 5 offence—
- (a) applies to conduct in which a person engaged on or after 1 January 1991, and
  - (b) applies even if the act or conduct constituting the relevant Part 5 offence would not constitute such an offence but for this section.
- (6) But sections 52 and 59, and any enactment or rule of law relating to an offence ancillary to a relevant Part 5 offence, do not apply to—
- (a) conduct in which the person engaged before 1 September 2001, or
  - (b) conduct in which the person engaged on or after that date which was ancillary to an act or conduct which—
    - (i) was committed or engaged in before that date, and
    - (ii) would not constitute a relevant Part 5 offence, or fall within section 52(2) or 59(2), but for this section,
- unless, at the time the person engaged in the conduct, it amounted in the circumstances to a criminal offence under international law.

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- (7) Section 65, so far as it has effect in relation to relevant Part 5 offences—
- (a) applies to failures to exercise control of the kind mentioned in section 65(2) or (3) which occurred on or after 1 January 1991, and
  - (b) applies even if the act or conduct constituting the relevant Part 5 offence would not constitute such an offence but for this section.
- (8) But section 65, so far as it has effect in relation to relevant Part 5 offences, does not apply to a failure to exercise control of the kind mentioned in section 65(2) or (3) which occurred before 1 September 2001 unless, at the time the failure occurred, it amounted in the circumstances to a criminal offence under international law.
- (9) In this section “relevant Part 5 offence” means an offence under section 51, 52, 58 or 59 or an offence ancillary to such an offence.

#### Textual Amendments

**F11** Ss. 65A, 65B inserted (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), [ss. 70\(3\)](#), [182\(5\)](#) (with [s. 180](#), [Sch. 22](#)); [S.I. 2010/816](#), [art. 2](#), [Sch. para. 3](#)

#### **65B Modification of penalties: provision supplemental to section 65A**

- (1) In the case of a pre-existing E&W offence committed before 1 September 2001, in section 53(6) “30 years” is to be read as “14 years”.
- (2) In the case of an offence of the kind mentioned in section 55(1)(d) which is ancillary to a pre-existing E&W offence committed before 1 September 2001, nothing in section 53(5) and (6) disapplies the penalties provided for in sections 4 and 5 of the Criminal Law Act 1967.
- (3) In the case of a pre-existing NI offence committed before 1 September 2001, in section 60(6) “30 years” is to be read as “14 years”.
- (4) In the case of an offence of the kind mentioned in section 62(1)(d) which is ancillary to a pre-existing NI offence committed before 1 September 2001, nothing in section 60(5) and (6) disapplies the penalties provided for in sections 4 and 5 of the Criminal Law Act (Northern Ireland) 1967.
- (5) In this section—
 

“pre-existing E&W offence” means—

  - (a) an offence under section 51 on account of an act 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 51 on account of an act 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 (grave breaches of the Conventions);
  - (c) an offence of a kind mentioned in section 55(1)(a) to (c) which is ancillary to an offence within paragraph (a) or (b) above;

“pre-existing NI offence” means—

  - (a) an offence under section 58 on account of an act constituting genocide, if at the time the act was committed it also amounted to an offence under section 1 of the Genocide Act 1969;

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*Changes to legislation: There are currently no known outstanding effects for the International Criminal Court Act 2001, Part 5. (See end of Document for details)*

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- (b) an offence under section 58 on account of an act 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 (grave breaches of the Conventions);
- (c) an offence of a kind mentioned in section 62(1)(a) to (c) which is ancillary to an offence within paragraph (a) or (b) above.]

#### Textual Amendments

**F11** Ss. 65A, 65B inserted (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), [ss. 70\(3\), 182\(5\)](#) (with [s. 180, Sch. 22](#)); [S.I. 2010/816](#), [art. 2, Sch. para. 3](#)

## 66 Mental element

- (1) References in this Part 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 in relation to the ICC),shall be construed in accordance with this section.
- (2) Unless otherwise provided by—
  - (a) the articles mentioned in the definition in section 50(1) of the crimes specified in subsection (1)(a) to (c) above, or any relevant Elements of Crimes (see section 50(2)),
  - (b) section 54(1) or 61(1) or article 70.1 (offences in relation to the ICC), or
  - (c) section 65 (responsibility of commanders and other superiors),a person is regarded as committing such an act or crime only if the material elements are committed with intent and knowledge.
- (3) For this purpose—
  - (a) a person has intent—
    - (i) in relation to conduct, where he means to engage in the conduct, and
    - (ii) in relation to a consequence, where he 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.
- (4) In interpreting and applying the provisions of this section (which corresponds to article 30) the court shall take into account any relevant judgment or decision of the ICC.  
Account may also be taken of any other relevant international jurisprudence.

## 67 Meaning of “UK national”, “UK resident” and “person subject to UK service jurisdiction”

- (1) In this Part a “United Kingdom national” means an individual who is—

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- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas Citizen,
  - (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.
- (2) In this Part a “United Kingdom resident” means a person who is resident in the United Kingdom.
- (3) In this Part a “person subject to UK service jurisdiction” means—  
 [F12 a person subject to service law, or a civilian subject to service discipline, within the meaning of the Armed Forces Act 2006.]

#### **Textual Amendments**

**F12** Words in s. 67(3) 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. 189](#); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4

#### **[F13 67A Supplemental provision about UK residents**

- (1) 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 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 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 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;

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- (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;
  - (j) an individual who is detained in lawful custody in the United Kingdom.
- (2) 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 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.
- (3) 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, or
  - (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, detention or 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 or a warrant under section 1 or 4A of the Repatriation of Prisoners Act 1984,
  - (d) detained under Part 3 of the Mental Health Act 1983 or by virtue of an order under section 5 of the Criminal Procedure (Insanity) Act 1964 or section 6 or 14 of the Criminal Appeal Act 1968 (hospital orders, etc),
  - (e) detained by virtue of an order under Part 6 of the Criminal Procedure (Scotland) Act 1995 (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 to which a person is subject by virtue of an order under section 59 of the Criminal Procedure (Scotland) Act 1995, or
  - (f) detained under Part 3 of the Mental Health (Northern Ireland) Order 1986 or by virtue of an order under section 11 or 13(5A) of the Criminal Appeal (Northern Ireland) Act 1980;
- “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;

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“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;

and a reference to having leave to enter or remain in the United Kingdom is to be construed in accordance with the Immigration Act 1971.

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

#### Textual Amendments

**F13** S. 67A inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), ss. 70(4), 182(5) (with s. 180, Sch. 22); S.I. 2010/816, art. 2, Sch. para. 3

## 68 Proceedings against persons becoming resident within the jurisdiction

- (1) This section applies in relation to a person who commits acts outside the United Kingdom at a time when he is not a United Kingdom national, a United Kingdom resident or a person subject to UK service jurisdiction and who subsequently becomes resident in the United Kingdom.
- (2) Proceedings may be brought against such a person in England and Wales or Northern Ireland for a substantive offence under this Part if—
- (a) he is resident in the United Kingdom 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 that part of the United Kingdom.
- (3) Proceedings may be brought against such a person in England and Wales or Northern Ireland for an offence ancillary to a substantive offence under this Part (or what would be such a substantive offence if committed in that part of the United Kingdom) if—
- (a) he is resident in the United Kingdom 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 that part of the United Kingdom.
- (4) In this section a “substantive offence” means an offence other than an ancillary offence.
- (5) Nothing in this section shall be read as restricting the operation of any other provision of this Part.



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*Changes to legislation: There are currently no known outstanding effects for the International Criminal Court Act 2001, Part 5. (See end of Document for details)*

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

- C6** S. 68(1) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), art. 1(3), [Sch. 1 para. 48\(2\)](#)

**69 References to acts to include omissions, etc**

In this Part “act”, except where the context otherwise requires, includes an omission, and references to conduct have a corresponding meaning.

*Consequential provisions*

**70 Offences under section 1 of the Geneva Conventions Act 1957**

- (1) In section 1 of the Geneva Conventions Act 1957 (c. 52) (punishment of grave breaches of the conventions)—
- (a) in subsection (1), omit the words from “and on conviction on indictment” to the end; and
  - (b) omit subsections (3) to (5).
- (2) After that section insert—

**“1A Trial and punishment of offences under s.1**

- (1) The following provisions apply in relation to offences under section 1 of this Act.
- (2) The offence is triable only on indictment.
- (3) Proceedings for an offence shall not be instituted—
- (a) in England and Wales, except by or with the consent of the Attorney General;
  - (b) in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland.
- (4) If the offence is not committed in the United Kingdom—
- (a) proceedings may be taken, and
  - (b) the offence may for incidental purposes be treated as having been committed,
- in any place in the United Kingdom.
- (5) A person convicted of an offence involving murder shall be dealt with as for an offence of murder.

In this subsection “murder” means the killing of a person in such circumstances as would constitute murder if committed in the part of the United Kingdom in which the proceedings are brought.

- (6) In any other case a person convicted of an offence is liable to imprisonment for a term not exceeding 30 years.”.

*Changes to legislation: There are currently no known outstanding effects for the International Criminal Court Act 2001, Part 5. (See end of Document for details)*

(3) The above amendments do not apply in relation to offences committed before the commencement of this section.

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

- C7 S. 70 extended (with modifications) (IoM) (1.4.2004) by [S.I. 2004/714](#), [art. 2\(d\)](#), [Sch.](#)
- C8 S. 70 extended (Guernsey) (with modifications) (15.1.2011) by [The Geneva Conventions Act \(Guernsey\) Order 2010 \(S.I. 2010/2965\)](#), [arts. 1, 3](#), [Sch. 1](#)
- C9 S. 70 extended (Jersey) (with modifications) (8.10.2014 coming into force in accordance with art. 1) by [The International Criminal Court Act 2001 \(Jersey\) Order 2014 \(S.I. 2014/2706\)](#), [arts. 1, 2\(c\)](#), [Sch.](#)

71 .....

F14 .....

**Textual Amendments**

- F14 S. 71 repealed (1.1.2004) by [Extradition Act 2003 \(c. 41\)](#), [ss. 219, 220](#), [Sch. 3 para. 12](#), [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\(2\)\)](#)))

72 .....

F15 .....

**Textual Amendments**

- F15 S. 72 repealed (1.1.2004) by [Extradition Act 2003 \(c. 41\)](#), [s. 220](#), [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\(2\)\)](#)))

73 .....

F16 .....

**Textual Amendments**

- F16 S. 73 repealed (1.1.2004) by [Extradition Act 2003 \(c. 41\)](#), [s. 220](#), [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\(2\)\)](#)))

<sup>F17</sup>74 **Consequential amendments of armed forces legislation**

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**Changes to legislation:** There are currently no known outstanding effects for the International Criminal Court Act 2001, Part 5. (See end of Document for details)

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### Textual Amendments

**F17** S. 74 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

**Changes to legislation:**

There are currently no known outstanding effects for the International Criminal Court Act 2001, Part 5.