



# International Criminal Court Act 2001

## 2001 CHAPTER 17

### PART 3

#### OTHER FORMS OF ASSISTANCE

##### *Introduction*

#### **27 Provision of assistance**

- (1) The powers conferred by this Part on the Secretary of State are exercisable for the purpose of providing assistance to the ICC in relation to investigations or prosecutions where—
  - (a) an investigation has been initiated by the ICC, and
  - (b) the investigation and any proceedings arising out of it have not been concluded.
- (2) Where facsimile transmission is used—
  - (a) for the making of a request by the ICC or the transmission of any supporting documents, or
  - (b) for the transmission of any document in consequence of such a request,this Part applies as if the documents so sent were the originals of the documents so transmitted.

Any such document shall be receivable in evidence accordingly.
- (3) Nothing in this Part shall be read as preventing the provision of assistance to the ICC otherwise than under this Part.

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### *Forms of assistance*

#### **28 Questioning**

- (1) This section applies where the Secretary of State receives a request from the ICC for assistance in questioning a person being investigated or prosecuted.
- (2) The person concerned shall not be questioned in pursuance of the request unless—
  - (a) he has been informed of his rights under article 55, and
  - (b) he consents to be interviewed.
- (3) The provisions of article 55 are set out in Schedule 3 to this Act.
- (4) Consent for the purposes of subsection (2)(b) may be given—
  - (a) by the person himself, or
  - (b) in circumstances in which it is inappropriate for the person to act for himself, by reason of his physical or mental condition or his youth, by an appropriate person acting on his behalf.
- (5) Such consent may be given orally or in writing, but if given orally it shall be recorded in writing as soon as is reasonably practicable.

#### **29 Taking or production of evidence**

- (1) This section applies where the Secretary of State receives a request from the ICC for assistance in the taking or production of evidence.

For this purpose “evidence” includes documents and other articles.
- (2) The Secretary of State may nominate a court in England and Wales or Northern Ireland to receive the evidence to which the request relates.
- (3) For this purpose the nominated court—
  - (a) has the same powers with respect to securing the attendance of witnesses and the production of documents or other articles as it has for the purpose of other proceedings before the court; and
  - (b) may take evidence on oath.
- (4) A person shall not be compelled to give evidence or produce anything in proceedings under this section that he could not be compelled to give or produce in criminal proceedings in the part of the United Kingdom in which the nominated court has jurisdiction.
- (5) If in order to comply with the request it is necessary for the evidence received by the court to be verified in any manner, the notice nominating the court shall specify the nature of the verification required.
- (6) No order for costs shall be made in proceedings under this section.

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

- (1) The following provisions apply in relation to proceedings before a nominated court under section 29 and the evidence received in the proceedings.
- (2) The court may, if it thinks it necessary in order to protect—

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- (a) victims and witnesses, or a person alleged to have committed an ICC crime, or
  - (b) confidential or sensitive information,
- direct that the public be excluded from the court.
- (3) The court shall ensure that a register is kept of the proceedings that indicates, in particular—
    - (a) which persons with an interest in the proceedings were present,
    - (b) which of those persons were represented and by whom, and
    - (c) whether any of those persons was denied the opportunity of cross-examining a witness as to any part of his testimony.
  - (4) The register shall not be open to inspection except as authorised by the Secretary of State or with the leave of the court.
  - (5) A copy of the register of the proceedings shall be sent to the Secretary of State for transmission to the ICC.

### **31 Service of process**

- (1) This section applies where the Secretary of State receives from the ICC a summons or other document together with a request for it to be served on a person in England, Wales or Northern Ireland.
- (2) The Secretary of State may direct the chief officer of police for the area in which the person appears to be to cause the document to be personally served on him.
- (3) If the document is so served, the chief officer of police shall forthwith inform the Secretary of State when and how it was served.
- (4) If it does not prove possible to serve the document, the chief officer of police shall forthwith inform the Secretary of State of that fact and of the reason.
- (5) In the application of this section to Northern Ireland the reference to the chief officer of police shall be read as a reference to the Chief Constable of the Royal Ulster Constabulary.

### **32 Transfer of prisoner to give evidence or assist in investigation**

- (1) This section applies where the Secretary of State receives a request from the ICC for the temporary transfer of a prisoner to the ICC for purposes of identification or for obtaining testimony or other assistance.
- (2) Where the prisoner is detained in Scotland, the Secretary of State shall transmit the request to the Scottish Ministers.
- (3) The relevant Minister may issue a warrant (a “transfer warrant”) requiring the prisoner to be delivered up, in accordance with arrangements made by the relevant Minister with the ICC, into the custody of the ICC.
- (4) A transfer warrant shall not be issued unless the prisoner consents to the transfer, but consent may not be withdrawn after the issue of the warrant.
- (5) The following provisions of Part 2 of this Act apply in relation to a transfer warrant under this section as they apply in relation to a delivery order under that Part—
  - section 15 (effect of delivery order), and

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section 24 and Schedule 2 (delivery up of persons subject to criminal proceedings, &c.).

- (6) In this section “prisoner” means—
- (a) a person serving a sentence in a prison to which the Prison Act 1952 (c. 52) or the Prison Act (Northern Ireland) 1953 (c.18(N.I.)) applies,
  - (b) a person serving a sentence in a prison, or in a young offenders institution, to which the Prisons (Scotland) Act 1989 (c. 45) applies,
  - (c) a person serving a sentence of [<sup>F1</sup>service detention (within the meaning of the Armed Forces Act 2006) ] or imprisonment imposed by a service court,
  - (d) a person detained in custody otherwise than in pursuance of a sentence, including in particular—
    - (i) a person in custody awaiting trial or sentence,
    - (ii) a person committed to prison for contempt or for default in paying a fine,
    - (iii) a person in custody in connection with proceedings to which Part 2 or 3 of Schedule 2 applies (extradition or other delivery proceedings),
    - (iv) a person detained under any provision of the Immigration Act 1971 (c. 77) [<sup>F2</sup>or the Nationality, Immigration and Asylum Act 2002] .
- (7) For the purposes of the Immigration Acts (within the meaning [<sup>F3</sup>given by section 158 of the Nationality, Immigration and Asylum Act 2002](c. 33)) a person detained under any provision of the Immigration Act 1971 [<sup>F4</sup>or the Nationality, Immigration and Asylum Act 2002] is not to be regarded as having left the United Kingdom at any time when a transfer warrant is in force in respect of him (including any time when he is in the custody of the ICC).
- (8) In this section, “the relevant Minister” means—
- (a) in relation to a person detained in England and Wales or Northern Ireland, the Secretary of State;
  - (b) in relation to a person detained in Scotland, the Scottish Ministers.

#### Textual Amendments

- F1** Words in s. 32(6) 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. 188**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F2** Words in s. 32(6)(d)(iv) inserted (4.4.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Consequential and Incidental Provisions\) Order 2003 \(S.I. 2003/1016\)](#), art. 3, **Sch. para. 13(1)**
- F3** Words in s. 32(7) substituted (4.4.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Consequential and Incidental Provisions\) Order 2003 \(S.I. 2003/1016\)](#), art. 3, **Sch. para. 13(2)**
- F4** Words in s. 32(7) inserted (4.4.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Consequential and Incidental Provisions\) Order 2003 \(S.I. 2003/1016\)](#), art. 3, **Sch. para. 13(2)**

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

- C1** S. 32(6)(c) 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(1)**

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### 33 Entry, search and seizure

- (1) This section applies where the Secretary of State receives from the ICC a request for assistance which appears to him to require the exercise of any of the powers conferred by Part 2 of the Police and Criminal Evidence Act 1984 (c. 60) or, in Northern Ireland, Part III of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (powers of entry, search and seizure).
- (2) The Secretary of State may direct a constable to apply for a warrant or order under the relevant Part, which shall apply in relation to an ICC crime as it applies to [<sup>F5</sup>[<sup>F6</sup>(in the case of Part 2 of the 1984 Act)] to an indictable offence [<sup>F6</sup>or (in the case of Part III of the 1989 Order) to a serious arrestable offence]].

#### Textual Amendments

- F5** Words in s. 33(2) substituted (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 111, 178(8), [Sch. 7 para. 49\(2\)](#); S.I. 2005/3495, [art. 2\(1\)\(m\)](#) (subject to [art. 2\(2\)](#))
- F6** Words in s. 33(2) repealed (N.I.) (1.3.2007) by [The Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288 \(N.I. 2\)\)](#), arts. 1, 15, 41, [Sch. 1 para. 36\(1\)](#), [Sch. 2](#)

### 34 Taking of fingerprints or non-intimate sample

- (1) The provisions of Schedule 4 have effect with respect to the taking of fingerprints or a non-intimate sample in response to a request from the ICC for assistance in obtaining evidence as to the identity of a person.
- (2) In subsection (1) and that Schedule “fingerprints” and “non-intimate sample” have 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.

### 35 Orders for exhumation

Proceedings before the ICC in respect of an ICC crime are criminal proceedings for the purposes of [<sup>F7</sup>paragraph 6 of Schedule 5 to the Coroners and Justice Act 2009] or section 11 of the Coroners Act (Northern Ireland) 1959 (c.15(N.I.)) (power of coroner to order exhumation).

#### Textual Amendments

- F7** Words in s. 35 substituted (25.7.2013) by [Coroners and Justice Act 2009 \(c. 25\)](#), s. 182(4)(e), [Sch. 21 para. 45](#) (with s. 180); S.I. 2013/1869, [art. 2\(o\)\(xvi\)](#)

### 36 Provision of records and documents

- (1) This section applies where the Secretary of State receives a request from the ICC for the provision of records and documents relating to—
  - (a) the evidence given in any proceedings in England and Wales or Northern Ireland in respect of conduct that would constitute an ICC crime, or
  - (b) the results of any investigation of such conduct with a view to such proceedings.

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- (2) The Secretary of State shall take such steps as appear to him to be appropriate to obtain the records and documents requested, and on their being produced to him he shall transmit them to the ICC.

### **37 Investigation of proceeds of ICC crime**

- (1) Where the Secretary of State receives a request from the ICC for assistance—
- (a) in ascertaining whether a person has benefited from an ICC crime, or
  - (b) in identifying the extent or whereabouts of property derived directly or indirectly from an ICC crime,
- the Secretary of State may direct a constable to apply for an order or warrant under Schedule 5.
- (2) In that Schedule—
- Part 1 makes provision for production or access orders,
  - Part 2 makes provision for the issuing of search warrants, and
  - Part 3 contains supplementary provisions.

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

Where the Secretary of State receives a request from the ICC for assistance in the freezing or seizure of proceeds, property and assets or instrumentalities of crime for the purpose of eventual forfeiture, he may—

- (a) authorise a person to act on behalf of the ICC for the purposes of applying for a freezing order, and
- (b) direct that person to apply for such an order under Schedule 6.

*National security*

### **39 Production or disclosure prejudicial to national security**

- (1) Nothing in any of the provisions of this Part, or any corresponding provision of an Act of the Scottish Parliament, requires or authorises the production of documents, or the disclosure of information, which would be prejudicial to the security of the United Kingdom.
- (2) For the purposes of any such provision a certificate signed by or on behalf of the Secretary of State to the effect that it would be prejudicial to the security of the United Kingdom for specified documents to be produced, or for specified information to be disclosed, is conclusive evidence of that fact.

*Supplementary provisions*

### **40 Verification of material**

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

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

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

**Changes to legislation:**

There are currently no known outstanding effects for the International Criminal Court Act 2001, Part 3.