

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

(version 1 of 1)

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 13th September 2001 and received Royal Assent on 24th September 2001

An Act of the Scottish Parliament to make provision for offences under the law of Scotland corresponding to offences within the jurisdiction of the International Criminal Court; to enable assistance to be provided to that court in relation to investigations and prosecutions; to make provision in relation to the enforcement of sentences and orders of that court; and for connected purposes.

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Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

OFFENCES

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

1 Genocide, crimes against humanity and war crimes

(1) It shall be an offence for a person to commit genocide, a crime against humanity or a war crime.

(2) Subsection (1) above applies to acts committed—

(a) in Scotland; or

(b) outwith the United Kingdom by a United Kingdom national or a United Kingdom resident.

(3) The [Genocide Act 1969 \(c.12\)](#) is repealed.

(4) In subsection (1) above—

“genocide” means an act of genocide as defined in [article 6](#);

“crime against humanity” means a crime against humanity as defined in [article 7](#); and

“war crime” means a war crime as defined in [article 8.2](#).

(5) The relevant provisions of the articles mentioned in subsection (4) above are set out in [schedule 1](#) to this Act.

(6) For the purposes of this Part of this Act, no account shall be taken of any provision of the articles omitted from the text set out in that schedule.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Crimes against humanity; Genocide; Scotland; War crimes

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

OFFENCES

This version in force from: **December 17, 2001 to present**

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2 Conduct ancillary to genocide etc.

(1) It shall be an offence for a person to engage in conduct ancillary to an act that constitutes—

- (a) an offence under [section 1\(1\)](#) of this Act; or
- (b) an offence under this section.

(2) Subsection (1) above applies where the conduct in question consists of or includes an act committed outwith Scotland by a United Kingdom national or a United Kingdom resident.

(3) It shall be an offence for a person to engage in conduct ancillary to an act committed (or intended to be committed) outwith Scotland by a person other than a United Kingdom national or a United Kingdom resident that, if the act were committed in Scotland (or were committed by a United Kingdom national or a United Kingdom resident), would constitute—

- (a) an offence under [section 1\(1\)](#) of this Act; or
- (b) an offence under this section.

(4) Subsection (3) above applies where the conduct in question consists of or includes an act committed—

- (a) in Scotland; or
- (b) outwith the United Kingdom by a United Kingdom national or a United Kingdom resident.

(5) The references in subsections (1) and (3) above to conduct ancillary to an act are to conduct that would constitute an ancillary offence in relation to that act if—

- (a) that conduct consisted of or included an act committed in Scotland; and
- (b) that act were committed in Scotland.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Complicity; Genocide; Inchoate offences; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

OFFENCES

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

3 Trial and punishment of main offences

(1) This section applies in relation to—

(a) offences under [section 1](#) of this Act;

(b) offences under [section 2](#) of this Act; and

(c) offences ancillary to an offence within paragraph (a) or (b) above.

(2) The offence shall be triable only on indictment.

(3) If an offence is committed outwith Scotland proceedings may be taken in any place in Scotland; and the offence may for incidental purposes be treated as having been committed in that place.

(4) A person convicted of—

(a) an offence involving murder; or

(b) an offence ancillary to an offence involving murder,

shall be dealt with as for an offence of murder or, as the case may be, the corresponding ancillary offence in relation to murder.

(5) Any person convicted of an offence (other than an offence involving murder or an offence ancillary to an offence involving murder) shall be liable to imprisonment for a term not exceeding 30 years.

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

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Subject: Criminal law **Other related subjects:** International law

Keywords: Complicity; Crimes against humanity; Criminal proceedings; Genocide; Imprisonment; Inchoate offences; Murder; Offences ancillary to murder; Scotland; War crimes

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

OFFENCES

This version in force from: **July 1, 2011 to present**

(version 2 of 2)

4 Offences in relation to the ICC

(1) A person intentionally committing any of the acts mentioned in [article 70.1](#) (offences against the administration of justice) may be dealt with as for the corresponding offence under the law of Scotland committed in relation to the High Court of Justiciary or the Court of Session.

(2) The corresponding offences under the law of Scotland are—

(a) in relation to [article 70.1\(a\)](#) (giving false testimony when under an obligation to tell the truth), an offence under [section 44\(1\)](#) of the [Criminal Law \(Consolidation\) \(Scotland\) Act 1995 \(c.39\)](#) or at common law;

(b) in relation to [article 70.1\(b\) to \(e\)](#) (other offences), an offence at common law [or (as the case may be) under the [Bribery Act 2010](#)]¹; and

(c) in relation to [article 70.1\(f\)](#) (soliciting or accepting a bribe as an official of the ICC), an offence under [the [Bribery Act 2010](#)]² or at common law.

(3) This section and, so far as may be necessary for the purposes of this section, the enactments and rules of law relating to the corresponding offences under the law of Scotland apply to acts committed—

(a) in Scotland; or

(b) outwith the United Kingdom by a United Kingdom national or a United Kingdom resident.

(4) If an offence under this section, or an offence ancillary to such an offence, is committed outwith the United Kingdom proceedings may be taken in any place in Scotland; and the offence may for incidental purposes be treated as having been committed in that place.

(5) The relevant provisions of [article 70.1](#) are set out in [schedule 2](#) to this Act.

1. Words inserted by Bribery Act 2010 c. 23 [Sch.1 para.6\(a\)](#) (July 1, 2011)

2. Words substituted by Bribery Act 2010 c. 23 [Sch.1 para.6\(b\)](#) (July 1, 2011)

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

OFFENCES

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

5 Responsibility of military commanders and other superiors

(1) This section applies in relation to—

- (a) offences under this Part of this Act; and
- (b) offences ancillary to such offences.

(2) A military commander, or a person effectively acting as a military commander, shall be responsible for offences committed by forces under his effective command and control, or (as the case may be) his effective authority and control, as a result of his failure to exercise control properly over such forces where—

- (a) he either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences; and
- (b) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(3) With respect to superior and subordinate relationships not described in subsection (2) above, a superior shall be responsible for offences committed by subordinates under his effective authority and control, as a result of his failure to exercise control properly over such subordinates where—

- (a) he either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offences;
- (b) the offences concerned activities that were within his effective responsibility and control; and
- (c) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(4) A person responsible under this section for an offence shall be regarded as being art and part in the commission of the offence.

(5) Nothing in this section shall be read as restricting or excluding—

- (a) any liability of a commander or other superior apart from this section; or

(b) the liability of any person other than a commander or other superior.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Command responsibility; Commanding officers; International crimes; Offences; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

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This version in force from: **December 17, 2001** to **present**

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6 Proceedings against persons becoming resident in the United Kingdom

(1) This section applies in relation to a person who—

(a) commits acts outwith the United Kingdom at a time when that person is neither a United Kingdom national nor a United Kingdom resident; and

(b) subsequently becomes a United Kingdom resident.

(2) Proceedings may be brought against such a person in Scotland for a substantive offence if—

(a) that person is a United Kingdom resident at the time the proceedings are brought; and

(b) the acts in respect of which the proceedings are brought would have constituted that offence if they had been committed in Scotland.

(3) Proceedings may be brought against such a person in Scotland for an offence ancillary to a substantive offence (or what would be such a substantive offence if committed in Scotland) if—

(a) that person is a United Kingdom resident at the time the proceedings are brought; and

(b) the acts in respect of which the proceedings are brought would have constituted that ancillary offence if they had been committed in Scotland.

(4) In this section a “substantive offence” means an offence under this Part of this Act other than an ancillary offence.

(5) Nothing in this section shall be read as restricting the operation of any other provision of this Part of this Act.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Criminal proceedings; International crimes; Offences; Residence; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

Supplementary provisions

This version in force from: **December 17, 2001 to present**

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7 Meaning of “ancillary offence”

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

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

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Subject: Criminal law **Other related subjects:** International law

Keywords: Complicity; Inchoate offences; International crimes; Scotland; Statutory definition

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

Supplementary provisions

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

8 Mental element

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

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

shall be construed in accordance with this section.

(2) Unless otherwise provided by—

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

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

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

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

Subject: Criminal law **Other related subjects:** International law

Keywords: Administration of justice offences; Crimes against humanity; Criminal intent; Genocide; Knowledge; Scotland; War crimes

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

Supplementary provisions

This version in force from: **March 28, 2011 to present**

(version 1 of 1)

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8A Meaning of “United Kingdom national” and “United Kingdom resident”

(1) In this Part—

“United Kingdom national” means—

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

(b) a person who under the [British Nationality Act 1981 \(c.61\)](#) is a British subject, or

(c) a British protected person within the meaning of that Act,

“United Kingdom resident” means a person who is resident in the United Kingdom.

(2) To the extent that it would not otherwise be the case, the following individuals are to be treated for the purposes of this Part as being resident in the United Kingdom—

(a) an individual who has indefinite leave to remain in the United Kingdom,

(b) any other individual who has made an application for such leave (whether or not it has been determined) and who is in the United Kingdom,

(c) an individual who has leave to enter or remain in the United Kingdom for the purposes of work or study and who is in the United Kingdom,

(d) an individual who has made an asylum claim, or a human rights claim, which has been granted,

(e) any other individual who has made an asylum claim or a human rights claim (whether or not the claim has been determined) and who is in the United Kingdom,

(f) an individual named in an application for indefinite leave to remain, an asylum claim or a human rights claim as a dependant of the individual making the application or claim if—

(i) the application or claim has been granted, or

(ii) the named individual is in the United Kingdom (whether or not the application or claim has been determined),

(g) an individual who would be liable to removal or deportation from the United Kingdom

but cannot be removed or deported because of [section 6](#) of the [Human Rights Act 1998 \(c.42\)](#) or for practical reasons,

(h) an individual—

(i) against whom a decision to make a deportation order under [section 5\(1\)](#) of the [Immigration Act 1971 \(c.77\)](#) by virtue of [section 3\(5\)\(a\)](#) of that Act (deportation conducive to the public good) has been made,

(ii) who has appealed against the decision to make the order (whether or not the appeal has been determined), and

(iii) who is in the United Kingdom,

(i) an individual who is an illegal entrant within the meaning of [section 33\(1\)](#) of the [Immigration Act 1971](#) or who is liable to removal under [section 10](#) of the [Immigration and Asylum Act 1999 \(c.33\)](#),

(j) an individual who is detained in lawful custody in the United Kingdom.

(3) When determining for the purposes of this Part whether any other individual is resident in the United Kingdom regard is to be had to all relevant considerations including—

(a) the periods during which the individual is, has been or intends to be in the United Kingdom,

(b) the purposes for which the individual is, has been or intends to be in the United Kingdom,

(c) whether the individual has family or other connections to the United Kingdom and the nature of those connections, and

(d) whether the individual has an interest in residential property located in the United Kingdom.

(4) In this section—

“asylum claim” means—

(a) a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom,

(b) a claim that the claimant would face a real risk of serious harm if removed from the United Kingdom,

“Convention rights” means the rights identified as Convention rights by [section 1](#) of the [Human Rights Act 1998](#),

“detained in lawful custody” means—

(a) detained in pursuance of a sentence of imprisonment or detention, a sentence of custody for life or a detention and training order,

(b) remanded in or committed to custody by an order of a court,

(c) detained pursuant to an order under [section 2](#) of the [Colonial Prisoners Removal Act 1884 \(c.31\)](#) or a warrant under [section 1](#) or [4A](#) of the [Repatriation of Prisoners Act 1984 \(c.47\)](#),

(d) detained under [Part 3](#) of the [Mental Health Act 1983 \(c.20\)](#) or by virtue of an order under [section 5](#) of the [Criminal Procedure \(Insanity\) Act 1964 \(c.84\)](#) or [section 6](#) or [14](#) of the [Criminal Appeal Act 1968 \(c.19\)](#) (hospital orders etc.),

(e) detained by virtue of an order under [Part 6](#) of the [Criminal Procedure \(Scotland\) Act 1995 \(c.46\)](#) (other than an order under [section 60C](#)) or a hospital direction under [section 59A](#) of that Act, and includes detention by virtue of the special restrictions set out in [Part 10](#) of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#) to which a person is subject by virtue of an order under [section 59](#) of the [Criminal Procedure \(Scotland\) Act 1995](#),

(f) detained under Part 3 of the Mental Health (Northern Ireland) Order 1986 (SI 1986/595) or by virtue of an order under section 11 or 13(5A) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47),

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

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

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

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

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

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1. Added by Criminal Justice and Licensing (Scotland) Act 2010 asp 13 (Scottish Act) [Pt 2 s.32\(2\)](#) (March 28, 2011)

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Subject: Criminal law **Other related subjects:** International law

Keywords: British overseas territories; Citizenship; Interpretation; Residence; Scotland; United Kingdom

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

Supplementary provisions

This version in force from: **December 17, 2001 to present**

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

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

(2) In interpreting and applying the provisions of the articles mentioned in [section 1\(4\)](#) of this Act the court shall take into account any relevant Elements of Crimes.

(3) The articles mentioned in [section 1\(4\)](#) of this Act shall for the purposes of this Part of this Act be construed subject to and in accordance with any relevant reservation or declaration certified by Order in Council under [section 50\(4\)](#) of the 2001 Act.

(4) In interpreting and applying the provisions of [sections 5](#) and [8](#) of this Act, and the provisions of [articles 6, 7, 8.2](#) and [70.1](#), the court—

(a) shall take into account any relevant judgment or decision of the ICC; and

(b) may take into account any other relevant international jurisprudence.

(5) Nothing in this Part of this Act shall be read as restricting the operation of any enactment or rule of law relating to—

(a) the extra-territorial application of offences (including offences under this Part of this Act); or

(b) offences ancillary to offences under this Part of this Act (wherever committed).

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Subject: Criminal law **Other related subjects:** International law

Keywords: International crimes; Interpretation; Offences; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

Supplementary provisions

This version in force from: **March 28, 2011 to present**

(version 1 of 1)

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9A Retrospective application of certain offences

- (1) [Section 1](#) of this Act applies to acts committed on or after 1 January 1991.
- (2) But that section does not apply to an act committed before 17 December 2001 which constitutes a crime against humanity or a war crime within [article 8.2\(b\)](#) or [\(e\)](#) unless, at the time the act was committed, it amounted in the circumstances to a criminal offence under international law.
- (3) [Section 2](#) of this Act applies to conduct engaged in on or after 1 January 1991.
- (4) The references in subsections (1), (3) and (5) of that section to an offence include an act or conduct that would not constitute an offence but for this section.
- (5) Any enactment or rule of law relating to an offence ancillary to a relevant offence applies—
 - (a) to conduct engaged in on or after 1 January 1991, and
 - (b) even if the act or conduct constituting the relevant offence would not constitute such an offence but for this section.
- (6) But [section 2](#) of this Act, and any enactment or rule of law relating to an offence ancillary to a relevant offence, do not apply to—
 - (a) conduct engaged in before 17 December 2001, or
 - (b) conduct engaged in on or after that date which was ancillary to an act or conduct that—
 - (i) was committed or engaged in before that date, and
 - (ii) would not constitute a relevant offence but for this section,unless, at the time the conduct was engaged in, it amounted in the circumstances to a criminal offence under international law.
- (7) [Section 5](#) of this Act, so far as it has effect in relation to relevant offences, applies—
 - (a) to failures to exercise control of the kind mentioned in [subsection \(2\) or \(3\)](#) of that section which occurred on or after 1 January 1991, and

(b) even if the act or conduct constituting the relevant offence would not constitute an offence but for this section.

(8) But [section 5](#) of this Act, so far as it has effect in relation to relevant offences, does not apply to a failure to exercise control of the kind mentioned in [subsection \(2\) or \(3\)](#) of that section which occurred before 17 December 2001 unless, at the time it occurred, it amounted in the circumstances to a criminal offence under international law.

(9) In this section, “relevant offence” means an offence under [section 1 or 2](#) of this Act or an offence ancillary to such an offence.

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1. Added by Criminal Justice and Licensing (Scotland) Act 2010 asp 13 (Scottish Act) [Pt 2 s.33](#) (March 28, 2011)

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Subject: Criminal law **Other related subjects:** International law

Keywords: International Criminal Court; Offences; Retrospective effect; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

Supplementary provisions

This version in force from: **March 28, 2011 to present**

(version 1 of 1)

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

(1) This section applies in relation to—

(a) an offence under [section 1](#) of this Act on account of an act committed before 17 December 2001 constituting genocide, if at the time the act was committed it also amounted to an offence under [section 1](#) of the [Genocide Act 1969](#),

(b) an offence under [section 1](#) of this Act on account of an act committed before 1 September 2001 constituting a war crime, if at the time the act was committed it also amounted to an offence under [section 1](#) of the [Geneva Conventions Act 1957 \(c.52\)](#) (grave breaches of the Conventions),

(c) an offence ancillary to an offence within paragraph (a) or (b) above.

(2) [Section 3\(5\)](#) of this Act has effect in relation to such an offence as if for ““30 years”” there were substituted ““14 years””.

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1. Added by Criminal Justice and Licensing (Scotland) Act 2010 asp 13 (Scottish Act) [Pt 2 s.33](#) (March 28, 2011)

Status: **R** Repealed

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 1 OFFENCES

Supplementary provisions

Repealed on: **November 1, 2002**

(version 2 of 2)

[...] ¹

1. Repealed by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 asp 9 (Scottish Act) [s.9](#) (November 1, 2002)

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 2 ASSISTANCE

Introduction

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

11 Provision of assistance to the ICC

(1) The powers conferred by this Part of this Act on the Scottish Ministers 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 of this Act applies as if the documents so sent were the originals of the documents so transmitted; and any such document shall be admissible in evidence accordingly.

(3) Nothing in this Part of this Act shall be read as preventing the provision of assistance to the ICC otherwise than under this Part.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Criminal investigations; Documentary evidence; Fax; International Criminal Court; Ministers' powers and duties; Prosecutions; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 2 ASSISTANCE

Forms of assistance

This version in force from: **December 17, 2001 to present**

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12 Questioning

- (1) This section applies where the Scottish Ministers receive 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) the person has been informed of the rights set out in [article 55](#) (rights of persons during an investigation under the Statute of the ICC);
 - (b) the fact that the person has been so informed has been recorded in writing; and
 - (c) the person 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)(c) above may be given orally or in writing; but if given orally it shall be recorded in writing as soon as is reasonably practicable.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Consent; International Criminal Court; Interrogation; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 2 ASSISTANCE

Forms of assistance

This version in force from: **December 17, 2001 to present**

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13 Taking or production of evidence

- (1) This section applies where the Scottish Ministers receive a request from the ICC for assistance in the taking or production of evidence.
- (2) The Scottish Ministers may nominate a court in Scotland to receive the evidence to which the request relates.
- (3) For this purpose the nominated court—
 - (a) has the same powers with respect to—
 - (i) securing the attendance of witnesses; and
 - (ii) subject to subsection (5) below, 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) Any proceedings under this section shall be conducted in private.
- (5) A person shall not be compelled to give evidence or produce anything in proceedings under this section that, under the Rules of Procedure and Evidence for the time being in force, the person could not be compelled to give or produce in proceedings before the ICC.
- (6) 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.
- (7) No order for expenses shall be made in proceedings under this section.
- (8) In subsection (5) above, the reference to the Rules of Procedure and Evidence is a reference to the rules adopted under article 51.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Criminal evidence; International Criminal Court; Jurisdiction; Ministers' powers and duties; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 2 ASSISTANCE

Forms of assistance

This version in force from: **December 17, 2001 to present**

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14 Taking or production of evidence: further provisions

(1) The following provisions apply in relation to proceedings before a nominated court under [section 13](#) of this Act and the evidence received in the proceedings.

(2) The court shall ensure that a record is kept of the proceedings that indicates, in particular—

(a) which persons with an interest in the proceedings were present; and

(b) which of those persons were represented and by whom.

(3) The record shall not be made available to any person except as authorised by the Scottish Ministers or with the leave of the court.

(4) A copy of the record of the proceedings shall be sent to the Scottish Ministers for transmission to the ICC.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Criminal evidence; International Criminal Court; Jurisdiction; Records; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 2 ASSISTANCE

Forms of assistance

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

15 Service of process

(1) This section applies where the Scottish Ministers receive from the ICC a summons or other document together with a request for it to be served on a person in Scotland.

(2) The Scottish Ministers may direct the chief constable for the area in which the person appears to be to cause the document to be personally served on the person.

(3) If the document is so served, the chief constable shall forthwith inform the Scottish Ministers of when and how it was served.

(4) If it does not prove possible to serve the document, the chief constable shall forthwith inform the Scottish Ministers of that fact and the reason.

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Subject: Criminal law **Other related subjects:** International law

Keywords: International Criminal Court; Ministers' powers and duties; Scotland; Service; Summonses

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 2 ASSISTANCE

Forms of assistance

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

16 Entry, search and seizure

(1) Where the Scottish Ministers receive from the ICC a request for assistance which appears to them to require the exercise of a power of entry, search or seizure, they may direct the procurator fiscal to apply to the sheriff for a warrant authorising entry, search and seizure by any constable.

(2) The sheriff shall have the same power in relation to an application for a warrant under subsection (1) above as the sheriff has in relation to an application for a warrant at common law.

(3) A warrant granted by virtue of this section may authorise such person as the sheriff considers appropriate to accompany a constable acting in exercise of the warrant; and any such person shall be named in the warrant.

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Subject: Criminal law **Other related subjects:** International law

Keywords: International Criminal Court; Ministers' powers and duties; Powers of entry; Scotland; Search and seizure; Warrants

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 2 ASSISTANCE

Forms of assistance

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

17 Taking of fingerprints etc.

[Schedule 4](#) to this Act (which makes provision with respect to the taking of fingerprints etc. in response to a request from the ICC for assistance in obtaining evidence as to the identity of a person) shall have effect.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Fingerprints; Identification; International Criminal Court; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 2 ASSISTANCE

Forms of assistance

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

18 Provision of records and documents

(1) This section applies where the Scottish Ministers receive a request from the ICC for the provision of records and documents relating to—

(a) the evidence given in any proceedings in Scotland 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.

(2) The Scottish Ministers shall take such steps as appear to them to be appropriate to obtain the records and documents requested; and on their being produced to them they shall transmit them to the ICC.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Criminal investigations; Documentary evidence; International Criminal Court; International crimes; Ministers' powers and duties; Records; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 2 ASSISTANCE

Forms of assistance

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

19 Investigation of proceeds of ICC crime

Where the Scottish Ministers receive 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 Scottish Ministers may direct such person as they may authorise to apply on behalf of the ICC for an order or warrant under [schedule 5](#) to this Act (which makes provision for production or access orders and the issuing of search warrants).

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Subject: Criminal law **Other related subjects:** International law

Keywords: Criminal investigations; International Criminal Court; International crimes; Ministers' powers and duties; Proceeds of crime; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 2 ASSISTANCE

Forms of assistance

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

20 Freezing orders in respect of property liable to forfeiture

Where the Scottish Ministers receive 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, they may—

- (a) authorise a person to act on behalf of the ICC for the purposes of applying for a freezing order, or applying for the variation or discharge of such an order; and
- (b) direct that person to apply for such an order, or the variation or discharge of such an order, under [schedule 6](#) to this Act (which makes provision for freezing orders in respect of property liable to forfeiture).

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Subject: Criminal law **Other related subjects:** International law

Keywords: Confiscation; International Criminal Court; Ministers' powers and duties; Proceeds of crime; Property freezing orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 2 ASSISTANCE

Supplementary provisions

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

21 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 of this Act to be verified in any manner, the Scottish Ministers may give directions as to the nature of the verification required.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Criminal evidence; International Criminal Court; Scotland; Verification

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 2 ASSISTANCE

Supplementary provisions

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

22 Transmission of material to the ICC

(1) Any evidence or other material obtained under this Part of this Act by a person other than the Scottish Ministers, together with any requisite verification, shall be sent to the Scottish Ministers 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.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Copies; Criminal evidence; Documentary evidence; International Criminal Court; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 3 ENFORCEMENT OF SENTENCES AND ORDERS

Sentences of imprisonment

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

23 Detention in Scotland of certain prisoners

(1) This section applies where the Scottish Ministers have agreed, in pursuance of [section 42\(2\)\(b\)](#) of the 2001 Act (duty to issue warrant where the Scottish Ministers agree that a person should be detained in Scotland), that a person on whom a sentence of imprisonment has been imposed (a “prisoner”) should be detained in Scotland.

(2) The warrant issued by the Scottish Ministers under that section of the 2001 Act shall include provision authorising—

(a) the detention of the prisoner in Scotland in accordance with the sentence imposed; and

(b) the taking of the prisoner to a specified place where the prisoner is to be detained,

(any such warrant being referred to in this section as a “Scottish warrant”).

(3) The provisions of a Scottish warrant—

(a) may be varied by the Scottish Ministers; and

(b) shall be so varied to give effect to any variation of the sentence.

(4) Subject to [section 24](#) of this Act, a prisoner subject to a Scottish warrant shall be treated for all purposes as if the prisoner were subject to a sentence of imprisonment imposed in exercise of its criminal jurisdiction by a court in Scotland.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Detention; Enforcement; International Criminal Court; Prisoners; Scotland; Warrants

Status: Law In Force / Amendment(s) Pending

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 3 ENFORCEMENT OF SENTENCES AND ORDERS

Sentences of imprisonment

This version in force from: **February 8, 2006** to **present**

(version 2 of 4)

24 Limited disapplication of certain provisions relating to sentences

The following provisions shall not apply in relation to a person detained in Scotland in pursuance of [section 42\(2\)\(b\)](#) of the 2001 Act—

- (a) any provision of rules made under [section 39](#) of the [Prisons \(Scotland\) Act 1989 \(c.45\)](#) (prison rules) providing for temporary release;
- (b) [section 40\(2\)](#) of that Act of 1989 (deduction of periods unlawfully at large); and
- (c) [[sections 1, 1AA, 1A, 2, 3, 3AA, 9, 10](#) and [27\(7\)](#) of the [Prisoners and Criminal Proceedings \(Scotland\) Act 1993 \(c.9\)](#)]¹ (transfer and release of prisoners).

1. Words substituted by Management of Offenders etc. (Scotland) Act 2005 asp 14 (Scottish Act) [s.21\(10\)](#) (February 8, 2006)

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Subject: Criminal law **Other related subjects:** International law

Keywords: Disapplication; International Criminal Court; Prisons; Scotland

Status:  Partially In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 3 ENFORCEMENT OF SENTENCES AND ORDERS

Sentences of imprisonment

This version partially in force from: **October 5, 2005**

(version 2 of 2)

[...] ¹

-
1. Repealed by Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13 (Scottish Act) [Sch.5\(1\) para.1](#) (October 5, 2005 for repeals specified in SSI 2005/161 art.3 as amended by SSI 2005/375 art.2; not yet in force otherwise)

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Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 3 ENFORCEMENT OF SENTENCES AND ORDERS

Orders

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

26 Power to make provision for enforcement of orders

(1) The Scottish Ministers may make provision by regulations for the enforcement in Scotland of—

(a) fines or forfeitures ordered by the ICC; and

(b) orders by the ICC against convicted persons specifying reparations to, or in respect of, victims.

(2) The regulations may authorise the Scottish Ministers—

(a) to appoint a person to act on behalf of the ICC for the purposes of enforcing the order; and

(b) to give such directions to the appointed person as appear to them necessary.

(3) The regulations shall provide for the registration of the order by a court in Scotland as a precondition of enforcement.

(4) An order shall not be so registered unless the court is satisfied that the order is in force and not subject to appeal.

(5) If the order has been partly complied with, the court shall register the order for enforcement only so far as it has not been complied with.

(6) The regulations may provide that—

(a) for the purposes of enforcement an order so registered has the same force and effect;

(b) the same powers are exercisable in relation to its enforcement; and

(c) proceedings for its enforcement may be taken in the same way,

as if the order were an order of a court in Scotland.

(7) The regulations may for the purposes mentioned in subsection (6)(a) above apply any enactment relating to the enforcement in Scotland of orders of a court of a country or territory outside the United Kingdom.

(8) A court shall not exercise its powers of enforcement under the regulations in relation to

any property unless it is satisfied—

(a) that a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court; and

(b) that the exercise of the powers will not prejudice the rights of *bona fide* third parties.

(9) The regulations may provide that the reasonable expenses of and incidental to the registration and enforcement of an order are recoverable as if they were sums recoverable under the order.

(10) Regulations under this section—

(a) may make different provision for different kinds of order; and

(b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Enforcement; International Criminal Court; Judgments and orders; Ministers' powers and duties; Regulations; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 4 GENERAL

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

27 Supplementary provisions relating to the ICC

(1) [Paragraph 5 of Schedule 1](#) to the 2001 Act (which sets out the circumstances in which orders, judgments, warrants or requests of the ICC are probative) shall apply for the purposes of this Act as it applies for the purposes of that Act.

(2) [Paragraph 6](#) of that Schedule (which sets out the circumstances in which certificates issued by the ICC, and statements relating to evidence given in proceedings before the ICC, are admissible in proceedings under that Act) shall apply for the purposes of this Act as it applies for the purposes of the 2001 Act but subject to the following modifications—

(a) in [sub-paragraph \(1\)](#), references to the 2001 Act shall be construed as references to this Act; and

(b) in [sub-paragraph \(2\)](#), the reference to proceedings under [Parts 2, 3 and 4](#) of the 2001 Act shall be construed as a reference to proceedings under [Parts 2 and 3](#) of this Act.

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Subject: Criminal law **Other related subjects:** International law

Keywords: International Criminal Court; Scotland; Supplemental provisions

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 4 GENERAL

This version in force from: **March 28, 2011** to **present**

(version 3 of 3)

28 Interpretation

(1) In this Act, unless the context otherwise requires—

“the 2001 Act” means the [International Criminal Court Act 2001 \(c.17\)](#);

“act” includes an omission, and references to conduct have a corresponding meaning;

“crime against humanity” has the meaning given by [section 1\(4\)](#) of this Act;

“Elements of Crimes” means the Elements of Crimes set out in regulations made under [section 50\(3\)](#) of the 2001 Act;

“evidence” includes documents and other articles;

“genocide” has the meaning given by [section 1\(4\)](#) of this Act;

“the ICC” means the International Criminal Court established by the Statute of the International Criminal Court, done at Rome on 17th July 1998;

“ICC crime” means a crime (other than the crime of aggression) over which the ICC has jurisdiction in accordance with that Statute;

[...] ¹

“war crime” has the meaning given by [section 1\(4\)](#) of this Act.

(2) References in this Act to articles are, unless the context otherwise requires, to articles of the Statute of the International Criminal Court, done at Rome on 17th July 1998.

1. Definitions repealed by Criminal Justice and Licensing (Scotland) Act 2010 asp 13 (Scottish Act) [Pt 2 s.32\(3\)](#) (March 28, 2011)

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Subject: Criminal law **Other related subjects:** International law

Keywords: International Criminal Court; International crimes; Interpretation; Offences; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 4 GENERAL

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

29 Crown application

This Act binds the Crown and applies to persons in the public service of the Crown, and property held for the purposes of the public service of the Crown, as it applies to other persons and property.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Crown; International Criminal Court; International crimes; Offences; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Part 4 GENERAL

This version in force from: **September 24, 2001 to present**

(version 1 of 1)

30 Short title and commencement

(1) This Act may be cited as the International Criminal Court (Scotland) Act 2001.

(2) The provisions of this Act, other than this section, shall come into force on such day as the Scottish Ministers may by order appoint; and different days may be so appointed for different purposes.

(3) An order under subsection (2) above shall be made by statutory instrument.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Commencement; International Criminal Court; International crimes; Offences; Scotland; Short titles

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 1 GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES: ARTICLES 6 TO 9

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

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—

- (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—

“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;

“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;

“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;

“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;

“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;

“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 ...;

“Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

“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;

“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;
- (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;

(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 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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Subject: Criminal law **Other related subjects:** International law

Keywords: Crimes against humanity; Genocide; War crimes

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 2 OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE:
ARTICLE 70

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

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”.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Administration of justice offences; International Criminal Court; International crimes; Jurisdiction

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 3 RIGHTS OF PERSONS DURING AN INVESTIGATION: ARTICLE 55

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

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.

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.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Criminal investigations; International Criminal Court; Powers rights and duties

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 4 TAKING OF FINGERPRINTS ETC.

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

1 Nomination of court to supervise taking of evidence

(1) Where the Scottish Ministers receive a request from the ICC for assistance in obtaining evidence as to the identity of a person, they may nominate a court in Scotland to supervise the taking from the person of relevant physical data or a sample (or both).

(2) They shall not do so unless—

(a) they are satisfied that other means of identification have been tried and have proved inconclusive; and

(b) they have notified the ICC of that fact and the ICC has signified that it wishes to proceed with the request.

(3) In this schedule—

“relevant physical data” has the meaning given by [section 18\(7A\)](#) of the [Criminal Procedure \(Scotland\) Act 1995 \(c.46\)](#); and

“sample” means—

(a) a sample of hair or other material taken, by means of cutting, combing or plucking, from the hair of an external part of the body other than pubic hair;

(b) a sample of nail or other material from a fingernail or toenail or from under any such nail;

(c) a sample of blood or other body fluid, of body tissue or of other material taken, by means of swabbing or rubbing, from an external part of the body; or

(d) a sample of saliva or other material taken, by means of swabbing, from the inside of the mouth.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Criminal evidence; Identification; International Criminal Court; Jurisdiction; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 4 TAKING OF FINGERPRINTS ETC.

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

2 Order to provide evidence

(1) The nominated court may order the taking from the person by a constable of relevant physical data or a sample (or both).

(2) Where a sample is taken, the sample shall be sufficient in quantity and quality for the purposes of enabling information to be produced by the means of analysis to be used in relation to the sample.

(3) In [paragraphs 3 to 5](#) below “the necessary identification evidence” means the relevant physical data or sample (or both) required by the order of the nominated court.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Courts; Criminal evidence; International Criminal Court; Judgments and orders; Samples; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 4 TAKING OF FINGERPRINTS ETC.

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

3 Requirement to attend and provide evidence

(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 allow the person at least seven days within which to attend; and

(b) may direct that the person 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 the arrest of the person; and

(b) the person may be detained for such period as is necessary to enable the necessary identification evidence to be taken.

(4) The court shall inform the person concerned of the effect of sub-paragraph (3) above.

(5) Where the person concerned is in prison or is otherwise lawfully detained—

(a) sub-paragraphs (1) to (4) above shall not apply; and

(b) the necessary identification evidence may be taken at the place where the person is detained or at such other place as the nominated court may direct.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Attendance; Courts; Criminal evidence; International Criminal Court; Judgments and orders; Police stations; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 4 TAKING OF FINGERPRINTS ETC.

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

4 Consent to taking of evidence

(1) The necessary identification evidence may be taken—

(a) with the consent, given in writing, of the person from whom such evidence is to be taken; or

(b) without that consent, in accordance with paragraph 5 below.

(2) The court shall inform the person concerned of the effect of sub-paragraph (1) above.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Consent; Courts; Criminal evidence; International Criminal Court; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 4 TAKING OF FINGERPRINTS ETC.

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

5 Taking of evidence without consent

(1) A constable may, if authorised by an officer of the rank of superintendent or above, take the necessary identification evidence without consent.

(2) A constable authorised under sub-paragraph (1) above may use reasonable force in taking the necessary identification evidence.

(3) An officer may give an authorisation under sub-paragraph (1) above orally or in writing; but if given orally it shall be confirmed in writing as soon as is reasonably practicable.

(4) Before relevant physical data or a sample is taken from a person upon an authorisation given under sub-paragraph (1) above, the person shall be informed that the authorisation has been given.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Consent; Courts; Criminal evidence; International Criminal Court; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 4 TAKING OF FINGERPRINTS ETC.

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

6 Record of certain matters to be made

(1) After relevant physical data or a sample is 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\(1\)](#) above; and
- (c) the fact that the person has been informed under [paragraph 5\(4\)](#) above of the giving of such authorisation.

(2) A copy of the record shall be sent to the Scottish Ministers for transmission to the ICC together with the material obtained under this schedule.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Courts; Criminal evidence; International Criminal Court; Records; Samples; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 4 TAKING OF FINGERPRINTS ETC.

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

7 Destruction of prints and samples

[Subsections \(3\) to \(5\) of section 18](#) of the [Criminal Procedure \(Scotland\) Act 1995 \(c.46\)](#) (destruction of prints or samples) shall apply in relation to relevant physical data and samples taken under this schedule in connection with the investigation of an ICC crime as they apply in relation to relevant physical data and samples taken in connection with the investigation of an offence under the law of Scotland.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Courts; Criminal evidence; Destruction of evidence; International Criminal Court; Samples; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 5 INVESTIGATION OF PROCEEDS OF ICC CRIME

Part 1 PRODUCTION OR ACCESS ORDERS

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

1 Application for order

(1) An order under this Part of this schedule may be made by the sheriff on an application by a person authorised for the purpose under [section 19](#) of this Act.

(2) Any such application may be made on an *ex parte* application to a sheriff in chambers.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Access; Applications; Criminal investigations; International Criminal Court; International crimes; Proceeds of crime; Production orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 5 INVESTIGATION OF PROCEEDS OF ICC CRIME

Part 1 PRODUCTION OR ACCESS ORDERS

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

2 Grounds for making order

(1) The sheriff may make an order under this Part of this schedule if 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.

(2) No such order shall be made if it appears to the sheriff that the material to which the application relates consists of or includes items subject to legal privilege.

(3) [Paragraphs 3 and 4](#) below specify the descriptions of order that may be made.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Access; Criminal investigations; International Criminal Court; International crimes; Proceeds of crime; Production orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 5 INVESTIGATION OF PROCEEDS OF ICC CRIME

Part 1 PRODUCTION OR ACCESS ORDERS

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

3 Production or access orders: standard orders

(1) If it appears to the sheriff that there is in a specified person's possession, custody or power specified material, or material of a specified description, to which the application relates, the sheriff may order such person 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 sheriff making the order that a longer or shorter period would be appropriate in the particular circumstances of the application.

(3) Where an access order is made in relation to material on any premises the sheriff may, on the application of a constable, order any person who appears to the sheriff 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 sub-paragraphs (1) and (2) above “specified” means specified in the order.

(5) Where a production or access order is made by virtue of [paragraph 4](#) below, the provisions of this paragraph shall have effect subject to the modifications specified in that paragraph.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Access; Criminal investigations; International Criminal Court; International crimes; Proceeds of crime; Production orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 5 INVESTIGATION OF PROCEEDS OF ICC CRIME

Part 1 PRODUCTION OR ACCESS ORDERS

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

4 Production or access orders: special orders

(1) A production or access order may be made in relation to a person if the sheriff thinks it is likely that material to which the application relates is in the person's possession, custody or power within the period of 28 days beginning with the date of an 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.

(3) In that case it must specify a person within sub-paragraph (1) above.

(4) 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 the person's possession, custody or power; and

(b) [paragraph 3](#) above has effect with the modifications mentioned in sub-paragraph (5) below.

(5) The modifications are—

(a) that the references in [paragraph 3\(1\)](#) above to material in the possession, custody or power of the specified person shall be read as references to the material that comes into the possession, custody or power of the specified person; and

(b) that the reference in [paragraph 3\(2\)](#) above to the date of the order shall be read as a reference to the date of the notification required by sub-paragraph (4)(a) above.

(6) In this paragraph "specified" means specified in the order.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Access; Criminal investigations; International Criminal Court; International crimes; Proceeds of crime; Production orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 5 INVESTIGATION OF PROCEEDS OF ICC CRIME

Part 1 PRODUCTION OR ACCESS ORDERS

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

5 Supplementary provision in relation to orders

- (1) The Scottish Ministers may by regulations make provision as to the discharge and variation of orders under this Part of this schedule.
- (2) Provision may be made by act of sederunt as to proceedings relating to such orders.
- (3) Regulations under sub-paragraph (1) above shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Access; Criminal investigations; International Criminal Court; International crimes; Proceeds of crime; Production orders; Regulations; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 5 INVESTIGATION OF PROCEEDS OF ICC CRIME

Part 1 PRODUCTION OR ACCESS ORDERS

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

6 Effect of order

(1) Sub-paragraphs (2) to (4) below 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 [section 39](#) of the 2001 Act, the order has effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Access; Computer evidence; Criminal investigations; International Criminal Court; International crimes; Proceeds of crime; Production orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 5 INVESTIGATION OF PROCEEDS OF ICC CRIME

Part 1 PRODUCTION OR ACCESS ORDERS

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

7 Order in relation to material in possession of government department

(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 shall be served as if the proceedings were civil proceedings against the department.

(3) Where the material concerned might for the time being be in the possession, custody or power of an officer of the department, an order may require such officer, whether named in the order or not, to comply with it.

(4) In this paragraph "government department" means a public department within the meaning of the [Crown Suits \(Scotland\) Act 1857 \(c.44\)](#) and any part of the Scottish Administration.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Access; Criminal investigations; Government departments; International Criminal Court; International crimes; Proceeds of crime; Production orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 5 INVESTIGATION OF PROCEEDS OF ICC CRIME

Part 2 SEARCH WARRANTS

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

8 Application for warrant

A search warrant may be issued under this Part of this schedule by a sheriff on an application made by a person authorised for the purpose under [section 19](#) of this Act.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Applications; Criminal investigations; International Criminal Court; International crimes; Proceeds of crime; Scotland; Search warrants

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 5 INVESTIGATION OF PROCEEDS OF ICC CRIME

Part 2 SEARCH WARRANTS

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

9 Effect of warrant

(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;

(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; and

(c) for the purposes of exercising the powers mentioned in sub-paragraphs (a) and (b) above, to open lockfast places on premises specified in the warrant.

(2) The warrant does not confer any right to seize material that consists of or includes items subject to legal privilege.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Criminal investigations; International Criminal Court; International crimes; Proceeds of crime; Scotland; Search warrants

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 5 INVESTIGATION OF PROCEEDS OF ICC CRIME

Part 2 SEARCH WARRANTS

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

10 Grounds for issue of warrant

(1) The sheriff may issue a search warrant under this Part of this schedule in the cases mentioned in sub-paragraphs (2), (3) and (5) below.

(2) The case is where the sheriff is satisfied that a production or access order made in relation to material on the premises has not been complied with.

(3) The case is where the sheriff 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 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 reasons mentioned in sub-paragraph (4) below.

(4) The reasons are—

(a) that it is not practicable to communicate with any person entitled to produce the material;

(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 case is where the sheriff 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 circumstances mentioned in sub-paragraph (6) below apply.

(6) The 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.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Criminal investigations; International Criminal Court; International crimes; Proceeds of crime; Scotland; Search warrants

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Schedule 5 INVESTIGATION OF PROCEEDS OF ICC CRIME

Part 3 INTERPRETATION

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

11

In this schedule, “items subject to legal privilege” and “premises” have the meanings respectively given to those expressions by [section 33](#) of the [Criminal Law \(Consolidation\) \(Scotland\) Act 1995 \(c.39\)](#).

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Subject: Criminal law **Other related subjects:** International law

Keywords: Criminal investigations; International Criminal Court; International crimes; Interpretation; Proceeds of crime; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 6 FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

1 Application for freezing order

(1) A freezing order may be made by the Court of Session on an application in pursuance of a direction given by the Scottish Ministers under [section 20](#) of this Act.

(2) Any such application may be made on an *ex parte* application to a judge in chambers.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Applications; International Criminal Court; Property freezing orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 6 FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

2 Grounds for making order

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.

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Subject: Criminal law **Other related subjects:** International law

Keywords: International Criminal Court; Property freezing orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 6 FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

3 Effect of order

(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.

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Subject: Criminal law **Other related subjects:** International law

Keywords: International Criminal Court; Property freezing orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 6 FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

4 Variation or discharge of order

(1) A freezing order may be varied or discharged in relation to any property—

(a) on an application in pursuance of a direction given by the Scottish Ministers under [section 20](#) of this Act; or

(b) 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.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Discharge; International Criminal Court; Property freezing orders; Scotland; Variation

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 6 FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

5 Power to appoint receiver

(1) The powers conferred by this paragraph may be exercised if a freezing order is in force.

(2) The Court of Session 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 the receiver is appointed,

subject to such exceptions and conditions as may be specified by the court.

(3) The Court of Session 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 which the receiver believed on reasonable grounds that the receiver was entitled to take, except in so far as the loss or damage is caused by the receiver's negligence.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Appointments; Court of Session; International Criminal Court; Property freezing orders; Receivers; Scotland

Status: Law In Force / Amendment(s) Pending

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 6 FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

This version in force from: **December 17, 2001 to present**

(version 1 of 2)

6 Inhibition of property affected by freezing order

(1) On the application of the Scottish Ministers, the Court of Session may, in respect of heritable property in Scotland affected by a freezing order (whether such property generally or particular such property), grant warrant for inhibition against any person specified in the freezing order.

(2) The warrant for inhibition—

(a) shall have effect as if granted on the dependence of an action for debt by the Scottish Ministers against the person and may be executed, recalled, loosed or restricted accordingly; and

(b) shall have the effect of letters of inhibition and shall forthwith be registered by the Scottish Ministers in the Register of Inhibitions and Adjudications.

(3) [Section 155](#) of the [Titles to Land Consolidation \(Scotland\) Act 1868 \(c.101\)](#) (effective date of inhibition) shall apply in relation to an inhibition for which warrant is granted under sub-paragraph (1) above as it applies to an inhibition by separate letters or contained in a summons.

(4) The fact that an inhibition has been executed under this paragraph in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of this schedule in respect of that property.

(5) An inhibition executed under this paragraph ceases to have effect when, or in so far as, the freezing order ceases to have effect in respect of the property in respect of which the warrant for inhibition was granted.

(6) If, by virtue of sub-paragraph (5) above, an inhibition ceases to have effect to any extent, the Scottish Ministers shall—

(a) apply for the recall, or as the case may be restriction, of the inhibition; and

(b) ensure that the recall, or restriction, is registered in the Register of Inhibitions and Adjudications.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Heritable property; Inhibitions; International Criminal Court; Property freezing orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 6 FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

This version in force from: **December 17, 2001** to **present**

(version 1 of 1)

7 Seizure to prevent removal from Scotland

(1) Where a freezing order has been made, a constable may, for the purpose of preventing any property specified in the order being removed from Scotland, seize the property.

(2) Property seized under this paragraph shall be dealt with in accordance with the directions of the Court of Session.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Confiscation; International Criminal Court; Ministers' powers and duties; Proceeds of crime; Property freezing orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 6 FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

8 Sequestration

(1) Where the estate of a person is sequestrated—

(a) property for the time being subject to a freezing order made before the date of sequestration (within the meaning of [section 12\(4\)](#) of the 1985 Act); and

(b) any proceeds of property realised by virtue of [paragraph 5\(2\)](#) above for the time being in the hands of a receiver appointed under that paragraph,

is excluded from the debtor's estate for the purposes of that Act.

(2) Where an award of sequestration is made before a freezing order is made, the powers conferred on a receiver appointed under [paragraph 5\(2\)](#) above shall not be exercised in relation to—

(a) property for the time being comprised in the whole estate of the debtor (within the meaning of [section 31\(8\)](#) of the 1985 Act);

(b) any income of the debtor which has been ordered under [section 32\(2\)](#) of that Act to be paid to the permanent trustee; or

(c) any estate which under [section 31\(10\)](#) or [32\(6\)](#) of that Act vests in the permanent trustee;

and it shall not be competent to submit a claim in relation to the freezing order to the interim trustee in accordance with [section 22](#) of that Act or the permanent trustee in accordance with [section 48](#) of that Act.

(3) Nothing in the 1985 Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on a receiver so appointed.

(4) Where, during the period before sequestration is awarded, an interim trustee stands appointed under [section 2\(5\)](#) of the 1985 Act and any property in the debtor's estate is subject to a freezing order, the powers conferred on the interim trustee 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, notwithstanding the coming into force of the 1985 Act, the Bankruptcy (Scotland) Act 1913 (c.20) applies to a sequestration, sub-paragraph (2) above shall have effect as if for paragraphs (a) to (c) there were substituted—

“(a) property which is for the time being comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913 (c.20);

(b) any income of the bankrupt which has been ordered under section 98(2) of that Act to be paid to the trustee;

(c) any estate which under section 98(1) of that Act vests in the trustee.”.

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Subject: Criminal law **Other related subjects:** International law

Keywords: International Criminal Court; Ministers' powers and duties; Proceeds of crime; Property freezing orders; Scotland; Sequestration

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 6 FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

9 Winding up

(1) Where an order for the winding up of a company has been made under the 1986 Act, 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 made before the relevant time; and

(b) any proceeds of property realised by virtue of [paragraph 5\(2\)](#) above for the time being in the hands of a receiver appointed under that paragraph.

(2) Where such an order is made, or such a resolution is passed, before a freezing order is made, the powers conferred on a receiver appointed under [paragraph 5\(2\)](#) above 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 the liquidator 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 1986 Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on a receiver so appointed.

(4) In this paragraph “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 1986 Act came into operation), this paragraph shall have effect with the substitution for references to that Act of references to the [Companies Act 1985](#).

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Subject: Criminal law **Other related subjects:** International law

Keywords: International Criminal Court; Ministers' powers and duties; Proceeds of crime; Property freezing orders; Receivers' powers and duties; Scotland; Winding-up

Status: Law In Force / Amendment(s) Pending

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 6 FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

This version in force from: **December 17, 2001 to present**

(version 1 of 2)

10 Property subject to floating charge

(1) This paragraph applies where—

(a) any property held subject to a floating charge by a company is property which is subject to a freezing order; and

(b) a receiver has been appointed by, or on the application of, the holder of the charge (a “floating charge receiver”).

(2) The powers of the floating charge receiver shall not be exercisable in relation to so much of the property as is for the time being subject to a relevant order.

(3) If the floating charge receiver was appointed before the freezing order was made, the powers conferred on the court by [paragraphs 1, 2, 4 and 5](#) above, and the powers of a receiver appointed under [paragraph 5\(2\)](#) above, shall not be exercised in the way mentioned in sub-paragraph (4) below in relation to any property—

(a) which is held by the company; and

(b) in relation to which the functions of the floating charge receiver are exercisable.

(4) The powers shall not be exercised—

(a) so as to inhibit the floating charge receiver from exercising functions of the floating charge receiver for the purpose of distributing property to the company's creditors;

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the floating charge receiver) properly incurred in the exercise of the floating charge receiver's functions in respect of the property.

(5) Nothing in the 1986 Act shall be taken to restrict (or enable the restriction of) the exercise of the powers conferred on a receiver so appointed.

(6) In this paragraph—

“floating charge” includes a floating charge within the meaning of [section 462](#) of the [Companies Act 1985 \(c.6\)](#) (power of incorporated company to create floating charges); and

“relevant order” means—

(a) in relation to heritable property situated in Scotland, a warrant for inhibition—

(i) registered, by virtue of [paragraph 6\(2\)\(b\)](#) above, in the Register of Inhibitions and Adjudications; and

(ii) taking effect before the appointment of the floating charge receiver; and

(b) in relation to any other property, a freezing order made before such appointment.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Floating charges; International Criminal Court; Ministers' powers and duties; Proceeds of crime; Property freezing orders; Receivers' powers and duties; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 6 FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

11 Protection of insolvency practitioners

(1) This paragraph applies where an insolvency practitioner seizes or disposes of property which is subject to a freezing order and the insolvency practitioner—

(a) reasonably believes that such seizing or disposing is done in the exercise of the functions of the insolvency practitioner; and

(b) would be entitled so to seize or dispose of the property if it 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 the insolvency practitioner's negligence.

(3) The insolvency practitioner shall have a lien on the property seized or the proceeds of its sale—

(a) for such of the expenses of the insolvency practitioner as were incurred in connection with the liquidation, sequestration or other proceedings in relation to which the seizure or disposal purported to take place; and

(b) for so much of the remuneration of the insolvency practitioner as may be reasonably assigned for the practitioner's acting in connection with those proceedings.

(4) Sub-paragraphs (1) to (3) above are without prejudice to the generality of any provision contained in the 1986 Act.

(5) In this paragraph "insolvency practitioner" means a person acting as an insolvency practitioner in relation to property subject to a freezing order.

(6) For the purpose of sub-paragraph (5) above any question whether a person is acting as an insolvency practitioner in Scotland or in England and Wales shall be determined in accordance with [section 388](#) of the 1986 Act, 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) above 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 (S.I. 1989/2405), 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.

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Subject: Criminal law **Other related subjects:** International law

Keywords: Insolvency practitioners; International Criminal Court; Ministers' powers and duties; Proceeds of crime; Property freezing orders; Scotland

Status: Law In Force

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)
Schedule 6 FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

This version in force from: **December 17, 2001 to present**

(version 1 of 1)

12 Interpretation

(1) For the purposes of this schedule—

“the 1985 Act” means the [Bankruptcy \(Scotland\) Act 1985 \(c.66\)](#);

“the 1986 Act” means the [Insolvency Act 1986 \(c.45\)](#);

“company” means any company which may be wound up under the 1986 Act;

“dealing with property” includes (without prejudice to the generality of that expression)—

(a) where a debt is owed to a person, making a payment to any person in reduction of the amount of the debt; and

(b) removing the property from Scotland; and

“property” includes money and all other property, heritable or moveable, real or personal and including things in action and other intangible or incorporeal property.

(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).

(3) For the purposes of [paragraphs 8 to 11](#) above references to a freezing order include references to a freezing order made under [Schedule 6](#) to the 2001 Act.

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Subject: Criminal law **Other related subjects:** International law

Keywords: International Criminal Court; Interpretation; Ministers' powers and duties; Proceeds of crime; Property freezing orders; Scotland

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Explanatory Note

(version 1 of 1)

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

Background

3. The Act, in tandem with the [International Criminal Court Act 2001](#) (“the UK Act”), will enable the United Kingdom to ratify the Statute of the International Criminal Court, which was adopted on 17 July 1998 at Rome. The UK Government signed the Statute on 30 November 1998 and legislation is required to allow the UK to comply with all its obligations under the Statute and accordingly to ratify.

4. In these notes the “ICC” means the International Criminal Court established by the Statute of the International Criminal Court done at Rome on 17 July 1998; “ICC Statute” means that Statute; references to articles are to articles of that Statute; “ICC crimes” means war crimes, crimes against humanity and genocide, which are defined in articles 6 to 8 of the ICC Statute; and “ICC prisoner” means a person sentenced by the ICC to a term in prison for committing an ICC crime.

5. The Act is in four Parts, with six schedules, as follows—

- [Part 1](#) — (Offences) incorporates into domestic law the offences of genocide, crimes against humanity and war crimes, and offences against the administration of justice of the ICC.
- [Part 2](#) — (Assistance) provides for various forms of co-operation with ICC investigations.
- [Part 3](#) — (Enforcement of sentences and orders) makes provision in relation to prisoners convicted by the ICC or certain UN tribunals who, by virtue of warrants issued by the Scottish Ministers under the UK Act, are serving their sentences in Scotland; and also confers power to make subordinate legislation for the enforcement of fines, forfeitures and reparations ordered by the ICC or the UN tribunals.
- [Part 4](#) — (General) defines certain expressions used in the Act; makes provision for proof of orders, judgements, warrants or requests of the ICC and evidence about ICC proceedings. It also makes provision for commencement.
- [Schedule 1](#) — (Genocide, crimes against humanity and war crimes) reproduces articles 6 to 9, which define those crimes.
- [Schedule 2](#) — (Offences against the administration of justice) reproduces article 70, which defines offences against the administration of justice in relation to the ICC.
- [Schedule 3](#) — (Rights of persons during investigation) reproduces article 55, which describes those rights.
- [Schedule 4](#) — (Taking of fingerprints etc.) describes the arrangements for taking such evidence in response to an ICC request for assistance in identifying a person.
- [Schedule 5](#) — (Investigation of proceeds of ICC crime) describes the arrangements for co-operating with ICC investigations into the proceeds of crime.
- [Schedule 6](#) — (Freezing orders in respect of property liable to forfeiture) describes the arrangements for complying with an ICC request to freeze property for the purpose of

eventual forfeiture.

PART 1— OFFENCES

6. [Part 1](#) incorporates the offences in the ICC Statute into domestic law. This is not an obligation under the ICC Statute, except in respect of offences against the administration of justice in relation to the ICC. Under the principle of “complementarity” it is intended that individual countries should prosecute ICC crimes domestically and the ICC will intervene only where states are genuinely unable or unwilling to take action.

Section 1— Genocide, crimes against humanity and war crimes

7. This section makes it an offence under Scots law to commit genocide, crimes against humanity and war crimes where the act is committed in Scotland or outwith the UK by a UK national or a UK resident. The crimes are defined in articles 6, 7 and 8.2 of the ICC Statute, which are reproduced in [schedule 1](#). The crime of genocide is already an offence in domestic law by virtue of the [Genocide Act 1969](#). However, jurisdiction under that Act is more limited than is provided for in the Act. Accordingly, that Act is repealed.

Section 2— Conduct ancillary to genocide etc.

8. This section creates two new offences in relation to conduct which is ancillary to genocide, a crime against humanity or a war crime. First, it makes it an offence for a UK national or a UK resident to engage in conduct outwith Scotland which is ancillary to an offence under [section 1](#), or this section. Second, it criminalises conduct in Scotland, or conduct of a UK national or a UK resident outwith the UK, which is ancillary to an act which if committed in Scotland (or by a UK national or UK resident) would constitute an offence under [section 1](#), or this section, but which being committed (or intended to be committed) outwith the UK by a person who is neither a UK national nor a UK resident does not constitute such an offence. The expression an “ancillary offence” is defined in [section 7](#).

9. [Subsections \(1\) and \(2\)](#) criminalise conduct outwith Scotland which, if that conduct had been undertaken in Scotland, would have amounted to an “ancillary offence” in relation to a genocide, crime against humanity or war crime. Where any person engages in such ancillary conduct in Scotland that conduct will amount to an offence at common law. Therefore, the offence under [subsections \(1\) and \(2\)](#) applies only in relation to conduct engaged in outwith Scotland by a UK national or a UK resident. The conduct may be ancillary to either the principal offence or to some other offence which is ancillary to the principal offence. For example, the conduct may be ancillary to a war crime, or ancillary to the incitement of a war crime.

10. The purpose of [subsections \(3\) and \(4\)](#) is to criminalise conduct in Scotland (or outwith the UK by a UK national or UK resident) which is ancillary to an act which is not an offence under the Act by virtue of such act being committed outwith Scotland by a person who is neither a UK national nor a UK resident. As with an offence under [subsections \(1\) and \(2\)](#), the conduct may be ancillary to either the principal act or to some other act which is ancillary to the principal act. For example, genocide committed outwith Scotland by a person who is neither a UK national nor a UK resident does not amount to an offence under the Act. However, conduct which is either ancillary to such a genocide or ancillary to an act which is ancillary to that genocide (such as conspiracy to commit genocide) will, if committed in Scotland (or outwith the UK by a UK national or UK resident), be an offence under [subsections \(3\) and \(4\)](#).

Section 3— Trial and punishment of main offences

11. This section makes provision in connection with the prosecution and sentencing of offences under [sections 1 and 2](#) of the Act and offences ancillary to such offences. [Subsection \(2\)](#) provides that these offences must be tried in solemn proceedings, which means that the accused will be tried on indictment before a sheriff, or a judge of the High Court of Justiciary, with a jury of fifteen, whose verdict of guilty must be reached by at least eight votes. [Subsection \(3\)](#) provides that the prosecution of offences committed outwith Scotland may take place anywhere in Scotland. Sentencing of those found guilty of murder, as defined in [subsection \(6\)](#), or an offence ancillary to murder, will be in line with the domestic penalty for murder or relevant ancillary offence in relation to murder. For other offences, sentences of up to 30 years will be available.

Section 4— Offences in relation to the ICC

12. This section provides that any person who commits an act against the administration of justice in

relation to the ICC will be prosecuted as for the equivalent domestic offence. The relevant domestic offences are set out in [subsection \(2\)](#). Many of these are offences at common law, such as attempting to pervert or defeat the ends of justice. [Subsection \(4\)](#) provides that offences committed outwith the UK may be tried anywhere in Scotland.

[Section 5](#)— Responsibility of military commanders and other superiors

13. This section makes provision for military commanders and other superiors to be held criminally responsible for the acts of their subordinates. The provision is based on article 28 of the ICC Statute. The wording draws a distinction between the standard expected of military and quasi-military commanders in relation to military forces under their command and other superior/subordinate relationships, such as those applying to government officials or heads of civilian organisations, as it is recognised that the latter may not have the same degree of control over the actions of their subordinates. It is well established in international law that superiors can be subject to investigation and prosecution with regard to war crimes etc. This concept stretches back as far as the Nuremburg and Tokyo Tribunals and has also been incorporated into the provisions of the Tribunals dealing with the former Yugoslavia and Rwanda. This section would permit such cases to be investigated and prosecuted in domestic courts in circumstances where the ICC might find a case on that basis.

14. [Subsections \(4\) and \(5\)](#) make it clear that liability under this provision is liability on an art and part basis (i.e. in the capacity of accessory or accomplice in relation to a criminal act), and does not preclude any other liability that the commander or superior may have, for example where the commander has in fact ordered the commission of the offences.

[Section 6](#)— Proceedings against persons becoming resident in the United Kingdom

15. This section provides that a person who is neither a UK national nor a UK resident at the time when he or she commits an offence under [Part 1](#) of the Act, or an offence which is ancillary to an offence under that Part, outwith the UK, may be prosecuted for that offence in Scotland if he or she subsequently becomes a UK resident. Proceedings may be brought against the person only where the offence is committed after the Act comes into effect.

[Section 7](#)— Meaning of “ancillary offence”

16. This section defines ancillary offences for the purposes of [Part 1](#) of the Act. They reflect the forms of secondary liability in article 25.3, but are defined in terms of the equivalent offences in Scots law.

[Section 8](#)— Mental element

17. This section provides, in line with article 30 of the ICC Statute, that unless otherwise provided, the necessary mental element of an offence is present if the material elements of ICC crime or an offence against the administration of justice are committed with “intent” and “knowledge”. “Intent” and “knowledge” are explained in [subsection \(3\)](#).

18. In accordance with article 30, [subsection \(2\)](#) provides that this general rule shall not apply where an alternative mental element is specified in certain provisions of the ICC Statute, certain provisions of the Act or in any of the relevant Elements of Crimes. An example is to be found in the finalised draft of the Elements of Crimes in respect of article 8(2)(b)(xxvi) (conscripting or enlisting children), where it is required that the perpetrator “knew or should have known” the age of the child concerned.

[Section 9](#)— Application of the principles of the law of Scotland, construction etc.

19. This section explains how the courts are to interpret and apply the ICC Statute. [Subsection \(1\)](#) provides that the domestic courts will apply the principles of the law of Scotland in trying offences under [Part 1](#) of the Act.

20. The courts must take into account the Elements of Crimes when interpreting and applying articles 6, 7 and 8.2. The Elements of Crimes will be adopted by the ICC when it is established, but are likely to be similar to those adopted by the Preparatory Commission for the ICC on 30 June 2000. When they have been adopted the UK Act provides that the text will be set out in regulations which will be made by statutory instrument. These articles must also be construed subject to and in accordance with any reservations or declarations made by the UK Government and certified by Order in Council made under the UK Act.

21. In interpreting and applying the provisions of the articles referred to in paragraph 20 above, and

also article 70.1 (and [sections 5](#) and [8](#) of this Act), the courts are required to take into account any relevant jurisprudence of the ICC. They may also take into account any other relevant international jurisprudence (for example, that of the International Criminal Tribunals).

22. Finally, [subsection \(5\)](#) preserves existing enactments and rules in respect of the extraterritorial application of offences and in respect of offences ancillary to offences under [Part 1](#) of the Act. For example, the provision for extraterritorial jurisdiction over grave breaches of the [Geneva Convention Act 1957](#) is unaffected.

[Section 10](#)— **Amendment of [Criminal Procedure \(Scotland\) Act 1995](#)**

23. This section pertains to the protection of victims and witnesses. Victims and witnesses will be entitled to the same protection as in domestic law and the safeguards provided in [sections 50](#), [92](#), [271](#) and [274](#) of the [Criminal Procedure \(Scotland\) Act 1995](#) will apply. However, it is considered necessary to extend the restrictions on evidence relating to sexual offences which is not admissible, to offences under [sections 1 and 2](#) of the Act which involve a sexual offence, and this amendment of the 1995 Act has that effect.

[PART 2](#)— **ASSISTANCE**

24. States Parties to the ICC are required to co-operate fully with the ICC in its investigation and prosecution of crimes within its jurisdiction. In particular, article 88 requires States Parties to ensure that there are procedures available under national law for all the forms of co-operation which are specified under Part 9 of the Statute. The main forms of assistance, other than the arrest and surrender of suspects, are outlined in article 93.1.

25. The Act is intended to implement the obligations under articles 88 and 93.1. It will provide, where necessary, a legislative basis for Scottish officials and the justice system to assist the ICC with its investigations or prosecutions.

26. No specific provision is to be made, however, with regard to assistance which can already be provided, and which is laid out in Orders in Council through which the UK implemented the UN Security Council resolutions establishing the International Criminal Tribunals. For example, the Secretary of State is able, without further provision, to respond to ICC requests to protect victims and witnesses or to facilitate the voluntary attendance of expert witnesses, in the same way as is already done with regard to the Tribunals.

[Section 11](#)— **Provision of assistance to the ICC**

27. This section makes provision for assistance to the ICC with regard to investigations which have been started, including those which may have been deferred or suspended under the arrangements pursuant to articles 18 and 19. Assistance under [Part 2](#) of the Act is not exclusive and does not prevent other types of assistance being rendered to the ICC.

[Section 12](#)— **Questioning**

28. This section relates to article 93.1(c), which permits the ICC to ask domestic authorities to question a person who the ICC is investigating or prosecuting. In accordance with article 55.2, a person cannot be questioned unless he or she has been informed of his or her rights under article 55, and these rights are reproduced in [schedule 3](#). [Subsection \(2\)](#) provides that the fact that the person has been informed of these rights is to be recorded in writing.

[Section 13](#)— **Taking or production of evidence**

29. This section applies where the Scottish Ministers receive an ICC request to take evidence on its behalf, including evidence on oath, or to secure the production of evidence. The Scottish Ministers may nominate a court to receive the evidence in question. The nominated court will have the same powers to secure the attendance of witnesses as it has in domestic cases. Those who attend cannot be compelled to give evidence or produce anything that they could not be compelled to produce under the Rules of Evidence and Procedure adopted under article 51. Proceedings under this section are to be conducted in private.

[Section 14](#)— **Taking or production of evidence: further provisions**

30. This section provides that a record is to be kept of the proceedings, a copy of which is to be sent

to the ICC.

Section 15— Service of process

31. This section makes provision for the arrangements in article 93.1(d), for assistance to be given in the form of personal service of any document on an individual in Scotland. These can include a summons for a suspect to appear before the ICC, which the ICC Pre-Trial Chamber, under article 58.7, may issue as an alternative to an arrest warrant.

Section 16— Entry, search and seizure

32. Under article 93.1(g) and (h), the ICC can ask for sites to be examined and searches and seizures to be carried out on its behalf. This section provides that, where the Scottish Ministers believe implementation of a request requires the exercise of powers of entry, search and seizure, they may make arrangements for the procurator fiscal to apply for a warrant which will grant the necessary powers to a constable. This would be done in line with a court's powers to grant a warrant at common law.

Section 17— Taking of fingerprints etc.

33. The purpose of this section and [schedule 4](#) is to enable the implementation of an ICC request, made under article 93.1(a), to locate and identify an individual in whom the ICC has an interest. The relevant domestic definition in [schedule 4](#) in this context is taken from the [Criminal Procedure \(Scotland\) Act 1995](#); and the definition of “sample” set out in [paragraph 1\(3\)](#) is also based on the meaning given by that Act.

Section 18— Provision of records and documents

34. The ICC may request that a State Party provide records and documents, including official records and documents, pursuant to article 93.1(i). Such a request would normally be able to be met without specific provision or under the powers in [sections 13](#) and [17](#). This section is intended to ensure that the request can also be met in the particular case where the ICC is requesting information about previous domestic proceedings or investigations in respect of conduct which would constitute an ICC crime.

Section 19— Investigation of proceeds of ICC crime

Section 20— Freezing orders in respect of property liable to forfeiture

35. These sections together make provision for providing assistance requested under article 93.1(k). This article provides that the ICC may request assistance in the identification, tracing and freezing or seizure of proceeds, property and assets and instruments of crimes, for the purpose of eventual forfeiture. Where the ICC requests assistance in determining whether a person has benefited from an ICC crime, or in identifying property derived from such a crime, [section 19](#) provides that the Scottish Ministers may arrange for an order or warrant to be issued under [schedule 5](#). Where the ICC requests assistance in the freezing or seizure of property for possible forfeiture, [section 20](#) provides that the Scottish Ministers may make arrangements for a freezing order under [schedule 6](#).

PART 3— ENFORCEMENT OF SENTENCES AND ORDERS

36. [Part 3](#) of the Act provides for the enforcement of ICC sentences and orders made following conviction. While a country which has ratified the ICC Statute is obliged to implement orders for fines, forfeitures and reparations that the ICC may make against a convicted person, the same does not apply to accepting prisoners to serve their sentences in domestic prisons. Instead, under article 103.1, a State may indicate to the ICC its willingness to accept ICC prisoners and can attach conditions to its acceptance. Once the ICC hands down a prison sentence and that sentence is no longer subject to appeal, the ICC will designate a State of enforcement among those States which have volunteered and the State shall inform the ICC if it accepts that designation.

37. The UK Government envisages that it will reach an enforcement of sentences agreement with the ICC. The UK Act makes provision for the Secretary of State to accept the UK as the State of enforcement with regard to a specified person. It provides that he or she will consult with the Scottish Ministers if it is considered to be appropriate for the person to serve his or her sentence in Scotland. If the Scottish Ministers agree they will issue a warrant authorising the bringing of the prisoner to Scotland. The prisoner cannot be sent to Scotland without the prior agreement of the Scottish

Ministers. The UK Act makes further provision in connection with transfer of the prisoner to the ICC, to another state or to another part of the UK. It also makes provision for custody of the prisoner in transit.

Section 23— Detention in Scotland of certain prisoners

38. This section makes provision for the situation where Scottish Ministers have agreed that Scotland should accept a prisoner sentenced by the ICC or certain UN tribunals. The Scottish Ministers are empowered to issue a warrant under the UK Act which will authorise the prisoner to be brought to a named prison in Scotland and detained there. The section makes provision for the warrant to be varied if the prisoner's sentence is varied. In general, the prisoner will be treated in the same way as a domestic prisoner serving a sentence of imprisonment imposed in Scotland for a similar offence.

Section 24— Limited disapplication of certain provisions relating to sentences

39. The ICC will be responsible for the sentencing of ICC prisoners. The Statute makes clear that the ICC will determine the sentence after taking into account factors such as time spent in custody on remand and whether multiple offences have been committed. Under article 110.2 the ICC alone has the right to decide any reduction in the sentence it imposes and article 105 states that an ICC sentence of imprisonment shall be binding on the States Parties, who shall in no case modify it. The provisions in this section therefore disapply those arrangements in Scotland which might otherwise interfere with the power of the ICC to be the sole body responsible for determining the length of detention of the ICC prisoner.

40. The provisions which will be disapplied are any rules made under [section 39](#) of the [Prisons \(Scotland\) Act 1989](#) providing for temporary release, [section 40\(2\)](#) of the same Act, which relates to periods unlawfully at large and various sections of the [Prisoners and Criminal Proceedings \(Scotland\) Act 1993](#) relating to transfer and release of prisoners.

Section 25— Amendment of [Mental Health \(Scotland\) Act 1984](#)

41. This provision puts ICC prisoners on the same footing as domestic prisoners by amending [subsection \(6\) of section 74](#) of the [Mental Health \(Scotland\) Act 1984](#) so that [subsection \(7\)](#) of that section applies in relation to ICC prisoners. The effect of this is that a prisoner who is released will not remain subject to any transfer or restriction direction which may have been made under the 1984 Act.

Section 26— Power to make provision for enforcement of orders

42. Under articles 77.2 and 70.3, in addition to a sentence of imprisonment, the ICC can impose on a convicted person a fine and order a “forfeiture of proceeds, property and assets derived directly or indirectly from” the crime for which the person has been convicted. Also, under article 75, the ICC may “make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation”.

43. [Section 26](#) empowers the Scottish Ministers to make regulations to enforce such fines, forfeitures or reparations. It is proposed that the procedure will follow that already established in the [Criminal Justice \(International Co-operation\) Act 1990 \(Enforcement of Overseas Forfeiture Orders\) Order 1991](#) (S.I. 1991/1463). The regulations may provide that, on receiving an order, the Scottish Ministers may appoint a person to act on the ICC's behalf. They will also provide for the registration of the order and may provide for it to be enforced as if it were an order of a domestic court. The regulations may be different for different types of orders.

44. [Subsection \(8\)](#) provides safeguards in respect of persons with an interest or rights in property affected by such an order. This is in keeping with article 109.1, which provides that States Parties shall give effect to fines and forfeitures “without prejudice to the rights of bona fide third parties”.

PART 4— GENERAL

Section 27— Supplementary provisions relating to the ICC

45. This section applies the terms of [paragraphs 5 and 6 of Schedule 1](#) to the UK Act. [Paragraph 5](#) provides that documents which purport to be issued by the ICC are to be treated as authentic and therefore do not require further proof. [Paragraph 6](#) explains that a certificate purporting to be issued by the ICC regarding certain aspects of ICC proceedings, and statements relating to evidence given in such proceedings, are admissible as evidence of those proceedings, and no further proof is

required.

[Section 28](#)— Interpretation

46. Crimes of aggression are not included within the definition of an “ICC crime”. This is because, under article 5 of the ICC Statute, the ICC will exercise its jurisdiction over the crime of aggression only when agreement has been reached on a definition of that crime and the conditions under which the jurisdiction will be exercised. Agreement has yet to be reached and would in any case require an amendment of the ICC Statute. The earliest such an amendment could be adopted is seven years after the coming into force of the Statute.

[SCHEDULE 1](#)— GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES: ARTICLES 6 TO 9

47. This schedule reproduces articles 6 to 9 of the ICC Statute, with the exception of three provisions in article 8 (war crimes): articles 8.1, 8.2(b)(xx) and article 8.3. Articles 8.1 and 8.3 are not relevant to the definition of war crimes in article 8.2. Article 8.2(b)(xx) will only become operative if the ICC Statute is amended and the earliest such an amendment could be adopted is seven years after the entry into force of the Statute.

[SCHEDULE 4](#)— TAKING OF FINGERPRINTS ETC.

48. Under article 93.1(a), the ICC can ask a State Party for assistance in identifying an individual in whom it has an interest. [Schedule 4](#) is intended to enable the taking of evidence necessary for identification where alternative means of responding to such an ICC request have been exhausted.

49. Where the Scottish Ministers receive an ICC request to identify an individual, [paragraph 1](#) provides that other means of identification must be tried first. If they prove inconclusive, the Scottish Ministers would inform the ICC. If the ICC nonetheless wishes to proceed with the request, the Scottish Ministers may nominate a court which may order the taking by a constable of the evidence necessary for identification, such as fingerprints or a sample of hair. The court may order the person to attend a police station to provide the specified evidence and if he or she fails to comply, the court may order his or her arrest for this purpose and the evidence may be taken without consent.

50. [Paragraph 7](#) applies the relevant parts of the [Criminal Procedure \(Scotland\) Act 1995](#) with regard to the destruction of fingerprints or samples.

International Criminal Court (Scotland) Act 2001 asp 13 (Scottish Act)

Explanatory Note

(version 1 of 1)

SCHEDULE 5— INVESTIGATION OF PROCEEDS OF ICC CRIME

51. [Schedule 5](#) applies where the ICC has made a request for assistance in ascertaining whether a person has benefited from an ICC crime, or in identifying property derived from an ICC crime, and the Scottish Ministers have directed an authorised person to apply for an order or warrant under [section 19](#).

Part 1— Production or access orders

52. [Part 1](#) sets out the provisions which govern the making of court orders or warrants for the production of, or access to, material. [Paragraph 2](#) sets out the grounds upon which the court may make an order under this Part.

53. [Paragraph 3](#) provides that a standard production or access order will require a named individual either to produce the specified material or material of a specified description to a constable (production order) or to give the constable access to this material (access order). The material should be produced within a specified period, normally 7 days, although this can be shortened or lengthened by the court.

54. [Paragraph 4](#) provides that a special production or access order may be made in relation to a person if the sheriff thinks it is likely that the person will have relevant material in his or her possession within 28 days. Such an order will require a named individual to notify a named constable when the information comes into his or her possession. This provision will allow for information that will in the future come into a person's possession (or come into existence) to be obtained quickly. It is substantially based on [Schedule 5](#) to the [Terrorism Act 2000](#).

55. [Part 1](#) of the schedule contains further provision concerning the procedure in relation to orders ([paragraph 5](#)) and the effect of such orders ([paragraph 6](#)).

Part 2— Search Warrants

56. This Part sets out the provisions governing the issue of a search warrant upon an application to the court by a person authorised to do so under [section 19](#). [Paragraph 10](#) sets out the circumstances in which such a warrant may be issued. These are, if it appears that a production or access order has not been complied with; where there are grounds for making a production or access order and, for example, it is not practicable to communicate with those who may be able to grant access; and in circumstances where more general material relating to an ICC crime is sought, when this material is likely to be of substantial value to the investigation.

SCHEDULE 6— FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

57. If the ICC makes a request the Scottish Ministers may direct a person to make an application to the court for a freezing order. [Schedule 6](#), which relates to [section 20](#), sets out the procedures for the making, variation and discharge of freezing orders. It also provides a power to appoint a receiver, seize property to prevent its removal from Scotland and defines the interaction of freezing orders with existing legislation.

58. The court must make a freezing order if it is satisfied that the ICC has made a forfeiture order or has reasonable grounds for believing that a forfeiture order may be made ([paragraph 2](#)).

59. The effect of a freezing order is described in [paragraph 3](#). Its purpose is to prohibit anyone from dealing with the property specified in the order, except by methods and under conditions defined in the order itself. This paragraph also provides that anybody affected by a freezing order will be notified. [Paragraph 4](#) allows for the variation or discharge of the order in pursuance of a direction given by the Scottish Ministers or on the application of a person affected by it. The order is to be discharged on conclusion of the relevant ICC proceedings.

60. [Paragraph 5](#) provides for the court to appoint a receiver when a freezing order is in force. The receiver would take possession of the specified property and manage it in accordance with the directions of the court. The schedule also provides that where a freezing order is in force a constable may seize property specified in the order to prevent its removal from Scotland ([paragraph 7](#)).

61. [Paragraph 6](#) provides that where a freezing order relates to heritable property, an application can be made for a warrant for inhibition. The court may grant a warrant for inhibition against any person in relation to that property. The Scottish Ministers may register the warrant in the Register of Inhibitions and Adjudications. The paragraph makes further provision regarding the operation of the inhibition and its recall.

62. The schedule then goes on to detail at [paragraphs 8 to 10](#) how freezing orders will be enforced when the order relates to a person whose estate is sequestrated, or a company in respect of which a liquidator or floating charge receiver is appointed. The effect of a freezing order being in place at the time of their appointment is to prevent the trustee in bankruptcy, liquidator or floating charge receiver from exercising functions in relation to assets affected by the order. [Paragraph 11](#) provides protection for insolvency practitioners when they seize or dispose of property which is subject to a freezing order.

- INTERNATIONAL CRIMINAL COURT (SCOTLAND) ACT

EXPLANATORY NOTES

These notes refer to the International Criminal Court (Scotland) Act 2001 (asp) which received Royal Assent on 24 September 2001

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1 This document relates to the International Criminal Court (Scotland) Act (SP Act) as introduced in the Scottish Parliament on SP Act -EN 1 Session ()

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