International Crimes and International Criminal Court Act 2000.

Commencement—

2.
(1)Sections 6 and 7, sections 14 to 23, Parts 3 to 10, sections 178 to 180, sections 182 to 184, sections 186 and 187, and the Schedule come into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made appointing different dates for different provisions.

(2)The rest of this Act comes into force on 1 October 2000.

Purpose—

3.
The purpose of this Act is—

(a)to make further provision in New Zealand law for the punishment of certain international crimes, namely, genocide, crimes against humanity, and war crimes; and

(b)to enable New Zealand to co-operate with the International Criminal Court established by the Rome Statute in the performance of its functions.

PART 1 - PRELIMINARY PROVISIONS

4.
Interpretation—

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

"Appeals Chamber" means the Appeals Chamber of the ICC

"forfeiture order"—

(a)means an order made by the ICC under article 77(2)(b) of the Statute or under the Rules for the forfeiture of tainted property; and

(b)includes a forfeiture order that is treated for the purposes of enforcement as a pecuniary penalty order under section 131

"ICC" means the International Criminal Court established under the Statute; and includes any of the organs of the International Criminal Court referred to in the Statute

"ICC prisoner" means a person who is—

(a)sentenced to imprisonment by the ICC; or

(b)the subject of a request by the ICC under section 171(1)(b) to be held in custody during a sitting of the ICC in New Zealand

"international crime" means, in relation to the ICC, a crime in respect of which the ICC has jurisdiction under article 5 of the Statute

"Minister" means the Minister of Justice

"New Zealand prison" or ``prison" means a penal institution within the meaning of section 2 of the Penal Institutions Act 1954

"New Zealand prisoner" or "prisoner" means a person who is for the time being in the legal custody of the superintendent of any New Zealand prison, whether or not that person has been convicted of an offence

"Pre-Trial Chamber" means the Pre-Trial Chamber of the ICC

"prison officer" means a person who is an officer as defined in section 2 of the Penal Institutions Act 1954

"property" means real or personal property of every description, whether situated in New Zealand or elsewhere and whether tangible or intangible; and includes an interest in any such real or personal property

"Prosecutor" means the Prosecutor of the ICC

"Rules" means the Rules of Procedure and Evidence made under article 51 of the Statute

"Statute" means the Rome Statute of the ICC dated 17 July 1998, a copy of the English text of which is set out in the Schedule

"tainted property" has, in relation to an international crime, the same meaning as in section 2(1) of the Proceeds of Crime Act 1991

"Trial Chamber" means the Trial Chamber of the ICC.

(2)For the purposes of this Act, a person is not liable to be detained in a New Zealand prison if the person is—

(a)subject to a suspended sentence of imprisonment imposed under the Criminal Justice Act 1985 that has not been activated; or

[(b)on parole, home detention, or compassionate release, or is subject to release conditions, under Part 1 of the Parole Act 2002; or]

(c)Repealed.

(d)subject to a community-based sentence (within the meaning of [section 4(1) of the Sentencing Act 2002]).

(3)For the purposes of Parts 1 to 11,—

(a) a reference in those Parts to a request by the ICC for assistance includes a reference to a request by the ICC for co-operation; and

(b) a reference in those Parts to a request by the ICC for assistance under a specified provision or in relation to a particular matter includes a reference to a request by the ICC for co-operation under that provision or in relation to that matter; and

(c)a reference in those Parts to a figure in brackets immediately following the number of an article of the Statute is a reference to the paragraph of that article with the number corresponding to the figure in brackets; and

(d) a reference to a sentence of imprisonment imposed by the ICC includes a reference to a sentence of imprisonment extended by the ICC (whether for the non-payment of a fine or otherwise); and

(e)a reference to a sentence of imprisonment imposed by the ICC for an international crime or an offence against the administration of justice includes a reference to a sentence of imprisonment imposed by the ICC for non-payment of a fine that was a penalty for that crime or offence, as the case may be.

5.
Act to bind the Crown—

This Act binds the Crown.

6.
Statute to have force of law—

(1)The provisions of the Statute specified in subsection (2) have the force of law in New Zealand in relation to the following matters:

(a)the making of requests by the ICC to New Zealand for assistance and the method of dealing with those requests:

(b)the conduct of an investigation by the Prosecutor or the ICC:

(c)the bringing and determination of proceedings before the ICC:

(d)the enforcement in New Zealand of sentences of imprisonment or other measures imposed by the ICC, and any related matters:

(e)the making of requests by New Zealand to the ICC for assistance and the method of dealing with those requests.

(2)Subsection (1) applies in relation to the following provisions of the Statute:

(a)Part 2 (which relates to jurisdiction, admissibility, and applicable law):

(b)Part 3 (which relates to general principles of criminal law):

(c)articles 51 and 52 of the Statute (which relate respectively to the Rules of Procedure and Evidence, and Regulations of the Court):

(d)Part 5 (which relates to the investigation and prosecution of crimes within the jurisdiction of the ICC):

(e)Part 6 (which relates to the conduct of trials):

(f)Part 7 (which relates to penalties):

(g)Part 8 (which relates to appeals and revision of acquittals, convictions, or sentences):

(h)Part 9 (which relates to international co-operation and judicial assistance):

(i)Part 10 (which relates to the enforcement of sentences and other measures imposed by the ICC).

7.

Obligations imposed by Statute or Rules—

For the purposes of any provision of the Statute or the Rules that confers a power, or imposes a duty or function on a State, that power, duty, or function may be exercised or carried out on behalf of the Government of New Zealand by the Attorney-General, if this Act makes no other provision.

PART 2 - INTERNATIONAL CRIMES AND OFFENCES AGAINST ADMINISTRATION OF JUSTICE

Jurisdiction to try international crimes

8.
Jurisdiction in respect of international crimes—

(1) Proceedings may be brought for an offence—

(a)against section 9 or section 10, if the act constituting the offence charged is alleged to have occurred—

(i)on or after the commencement of this section; or

(ii)on or after the applicable date but before the commencement of this section; and would have been an offence under the law of New Zealand in force at the time the act occurred, had it occurred in New Zealand; and

(b)against section 11, if the act constituting the offence charged is alleged to have occurred on or after the commencement of this section; and

(c)against section 9 or section 10 or section 11 regardless of—

(i)the nationality or citizenship of the person accused; or

(ii)whether or not any act forming part of the offence occurred in New Zealand; or

(iii)whether or not the person accused was in New Zealand at the time that the act constituting the offence occurred or at the time a decision was made to charge the person with an offence.

(2) Subsection (3) applies if a person to whom subsection (1)(a)(ii) applies is convicted of an offence against section 9 or section 10.

(3)If this subsection applies, the maximum term of imprisonment or the maximum fine that may be imposed on the offender is either—

(a)the maximum term or the maximum fine that could have been imposed under the laws of New Zealand at the time of the offence, if that maximum has subsequently been increased; or

(b)the maximum term or the maximum fine that can be imposed on the day on which sentence is to be passed, if that maximum is less than that prescribed at the time of the offence.

(4)In subsection (1)(a)(ii), ``applicable date'' means,—

(a)in relation to an offence against section 9, 28 March 1979:

(b)in relation to an offence against section 10, 1 January 1991.

International crimes

9.
Genocide—

(1)Every person is liable on conviction on indictment to the penalty specified in subsection (3) who, in New Zealand or elsewhere,—

(a)commits genocide; or

(b)conspires or agrees with any person to commit genocide, whether that genocide is to take place in New Zealand or elsewhere.

(2)For the purposes of this section, ``genocide'' is an act referred to in article 6 of the Statute.

(3)The penalty for genocide, or conspiring with, or agreeing with any person to commit genocide is,—

(a)if the offence involves the wilful killing of a person, the same as the penalty for murder:

(b)in any other case, imprisonment for life or a lesser term.

Cf Statute, article 6

10.
Crimes against humanity—

(1)Every person is liable on conviction on indictment to the penalty specified in subsection (3) who, in New Zealand or elsewhere, commits a crime against humanity.

(2)For the purposes of this section, a ``crime against humanity'' is an act specified in article 7 of the Statute.

(3)The penalty for a crime against humanity is,—

(a)if the offence involves the wilful killing of a person, the same as the penalty for murder:

(b)in any other case, imprisonment for life or a lesser term.

Cf Statute, article 7

11.
War crimes—

(1)Every person is liable on conviction on indictment to the penalty specified in subsection (3) who, in New Zealand or elsewhere, commits a war crime.

(2)For the purposes of this section, a ``war crime'' is an act specified in—

(a)article 8(2)(a) of the Statute (which relates to grave breaches of the First, Second, Third, and Fourth Geneva Conventions); or

(b)article 8(2)(b) of the Statute (which relates to other serious violations of the laws and customs applicable in international armed conflict); or

(c)article 8(2)(c) of the Statute (which relates to armed conflict not of an international character involving serious violations of article 3 common to the 4 Geneva Conventions of 12 August 1949); or

(d)article 8(2)(e) of the Statute (which relates to other serious violations of the laws and customs applicable in armed conflict not of an international character).

(3)The penalty for a war crime is,—

(a)if the offence involves the wilful killing of a person, the same as the penalty for murder:

(b)in any other case, imprisonment for life or a lesser term.

(4)Nothing in this section affects or limits the operation of section 3 of the Geneva Conventions Act 1958 (which makes a grave breach of the Geneva Conventions an offence under New Zealand law).

Cf Statute, article 8

General principles of criminal law

12.
General principles of criminal law—

(1)For the purposes of proceedings for an offence against section 9 or section 10 or section 11,—

(a)the following provisions of the Statute apply, with any necessary modifications:

(i)article 20 (which relates to crimes for which a person has previously been acquitted or convicted):

(ii)article 22(2) (which relates to principles of interpretation to be applied to the definition of crimes):

(iii)article 24(2) (which relates to the effect of changes in the law):

(iv)article 25 (which relates to principles of individual criminal responsibility):

(v)article 26 (which relates to the exclusion of jurisdiction over persons under 18 years):

(vi)article 28 (which relates to the responsibility of commanders and other superiors):

(vii)article 29 (which excludes any statute of limitations):

(viii)article 30 (which relates to the mental element of crimes):

(ix)article 31 (which specifies grounds for excluding criminal responsibility):

(x)article 32 (which relates to mistakes of fact or law):

(xi)article 33 (which relates to superior orders and prescription of law); and

(b)the provisions of New Zealand law and the principles of criminal law applicable to the offence under New Zealand law apply; and

(c)a person charged with the offence may rely on any justification, excuse, or defence available under the laws of New Zealand or under international law; and

(d)despite paragraphs (b) and (c), the fact that an act done outside New Zealand is not an offence under the law of the place where it was done is not a justification, excuse, or defence.

(2)For the purposes of subsection (1)(a), the articles of the Statute specified in that subsection (other than article 20) apply as if—

(a)a reference to the ICC were a reference to the New Zealand court exercising jurisdiction in respect of the proceedings; and

(b)a reference to the Statute includes a reference to this Act.

(3)If there is any inconsistency between the provisions specified in subsection (1)(a) and the provisions and principles specified in subsections (1)(b) and (1)(c), the provisions specified in subsection (1)(a) prevail.

(4)For the purposes of interpreting and applying articles 6 to 8 of the Statute in proceedings for an offence against section 9 or section 10 or section 11,—

(a)the New Zealand Court exercising jurisdiction in the proceedings may have regard to any elements of crimes adopted or amended in accordance with article 9 of the Statute:

(b)the provisions of Parts 5 to 10 of the Crimes Act 1961 do not apply.

Consent to prosecutions for international crimes

13.
Attorney-General's consent to prosecutions required—

(1)Proceedings for an offence against section 9 or section 10 or section 11 may not be instituted in any New Zealand court without the consent of the Attorney-General.

(2)Despite subsection (1), a person charged with an offence against section 9 or section 10 or section 11 may be arrested, or a warrant for his or her arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further proceedings can be taken until that consent has been obtained.

Cf 1989 No 106 s 12

Jurisdiction to try offences against administration of justice

14.
Jurisdiction in respect of offences against administration of justice—

Proceedings may be brought for an offence against any of sections 15 to 21 if—

(a)the act or omission constituting the offence charged is alleged to have occurred in New Zealand or on board a ship or aircraft that is registered in New Zealand; or

(b)the person charged is a New Zealand citizen.

Cf 1989 No 106 s 4; Statute, article 70(4)(a)

Offences against administration of justice

15.
Corruption of Judge—

(1)Every Judge is liable on conviction on indictment to imprisonment for a term not exceeding 14 years who, in New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for himself or herself or any other person in respect of an act—

(a)done or omitted by that Judge in his or her judicial capacity; or

(b)to be done or to be omitted by that Judge in his or her judicial capacity.

(2)Every Judge, the Registrar, and the Deputy Registrar is liable on conviction on indictment to imprisonment for a term not exceeding 7 years if, in New Zealand or elsewhere, that Judge, Registrar,

or Deputy Registrar corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for himself or herself or any other person in respect of an act—

(a)done or omitted by that Judge, Registrar, or Deputy Registrar, in his or her official capacity (other than an act or omission to which subsection (1) applies); or

(b)to be done or omitted by that Judge, Registrar, or Deputy Registrar, in his or her official capacity (other than an act or omission to which subsection (1) applies).

(3)In this section and in sections 16 and 21,—

"Deputy Registrar" means the Deputy Registrar of the ICC

"Judge" means a Judge of the ICC

"Registrar" means the Registrar of the ICC.

(4)In this section and in sections 16 and 17, ``bribe" has the same meaning as it has in section 99 of the Crimes Act 1961.

Cf 1961 No 43 s 100

16.
Bribery of Judge, etc—

(1)Every person is liable on conviction on indictment to imprisonment for a term not exceeding 7 years who, in New Zealand or elsewhere, corruptly gives or offers, or agrees to give, a bribe to any person with intent to influence a Judge in respect of any act or omission by that Judge in his or her judicial capacity.

(2)Every person is liable on conviction on indictment to imprisonment for a term not exceeding 5 years who, in New Zealand or elsewhere, corruptly gives or offers, or agrees to give, a bribe to any person with intent to influence a Judge or the Registrar or the Deputy Registrar in respect of an act or omission by that Judge, Registrar, or Deputy Registrar in his or her official capacity (other than an act or omission to which subsection (1) applies).

Cf 1961 No 43 s 101

17.
Corruption and bribery of official of ICC—

(1)Every official of the ICC is liable to imprisonment on conviction on indictment for a term not exceeding 7 years who, in New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for himself or herself or any other person in respect of an act—

(a)done or omitted by that officer in his or her official capacity; or

(b)to be done or omitted by that officer in his or her official capacity.

(2)Every person is liable on conviction on indictment to imprisonment for a term not exceeding 3 years who, in New Zealand or elsewhere, corruptly gives or offers, or agrees to give, a bribe to any person with intent to influence an official of the ICC in respect of an act or omission by that officer in his or her official capacity.

(3)In this section and in section 21, an ``official of the ICC" means a person employed under article 44 of the Statute.

Cf 1961 No 43 s 105

18.

False evidence—

(1)Every person who gives evidence for the purposes of a proceeding before the ICC or in connection with a request made by the ICC that contains an assertion that, if made in a judicial proceeding in New Zealand as evidence on oath, would be perjury, gives false evidence.

(2)A person is liable on conviction on indictment to imprisonment for a term not exceeding 7 years who, in New Zealand or elsewhere, gives false evidence.

(3)Despite subsection (2), if the false evidence is given in order to obtain the conviction of a person for an offence for which the maximum punishment is not less than 3 years' imprisonment, the punishment may be imprisonment for a term not exceeding 14 years.

Cf 1961 No 43 s 109

19.
Fabricating evidence before ICC—

Every person is liable on conviction on indictment to imprisonment for a term not exceeding 7 years who, in New Zealand or elsewhere, with intent to mislead the ICC, fabricates evidence by any means other than the giving of false evidence.

Cf 1961 No 43 s 113

20.
Conspiracy to defeat justice in ICC—

Every person is liable on conviction on indictment to imprisonment for a term not exceeding 7 years who, in New Zealand or elsewhere, in relation to any proceedings, request, or other matter referred to in the Statute, conspires to obstruct, prevent, pervert, or defeat the course of justice.

Cf 1961 No 43 s 116

21.
Interference with witnesses or officials—

Every person is liable on conviction on indictment to imprisonment for a term not exceeding 7 years who, in New Zealand or elsewhere,—

(a)dissuades or attempts to dissuade any person, by threats, force, bribery or other means, from giving evidence for the purposes of a proceeding before the ICC or in connection with a request made by the ICC; or

(b)makes threats or uses force against any Judge, the Registrar, the Deputy Registrar, or any official of the ICC with intent to influence or punish that person, in respect of an act—

(i)done or omitted by that person or any Judge, the Registrar, the Deputy Registrar, or any official of the ICC, in his or her official capacity; or

(ii)to be done or omitted by that person or any Judge, the Registrar, the Deputy Registrar, or any official of the ICC, in his or her official capacity; or

(c)intentionally attempts in any other way to obstruct, prevent, pervert, or defeat the course of justice, in relation to any proceedings, request, or other matter referred to in the Statute.

Cf 1961 No 43 s 117

Consent to prosecutions for offences against administration of justice

22.
Attorney-General's consent to prosecutions required—

(1)Proceedings for an offence against any of sections 15 to 21 may not be instituted in any New Zealand court without the consent of the Attorney-General.

(2)Despite subsection (1), a person charged with an offence against any of sections 15 to 21 may be arrested, or a warrant for his or her arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further proceedings can be taken until that consent has been obtained.

Cf 1989 No 106 s 12

Co-operation relating to offences against administration of justice

23.
Co-operation relating to offences against administration of justice—

(1)If the ICC makes a request for assistance in an investigation or proceeding involving an offence against the administration of justice, that request must be dealt with,—

> (a)in the case of a request for surrender, in the manner provided in Parts 3 and 4, and those Parts apply accordingly and with the necessary modifications, subject to any contrary provision in the Statute or the Rules; and
>
> (b)in the case of a request for enforcement of an order requiring reparation or the payment of a fine or a forfeiture order, in the manner provided in Parts 3 and 6, and those Parts apply accordingly and with the necessary modifications, subject to any contrary provision in the Statute or the Rules; and
>
> (c)in the case of a request for transit, in the manner provided in sections 136 to 138 and 150 to 156, and those sections apply accordingly and with the necessary modifications, subject to any contrary provision in the Statute or the Rules; and
>
> (d)in the case of a request for any other type of assistance, in the manner provided in Parts 3 and 5, and those Parts and, if applicable, Part 8, apply accordingly and with the necessary modifications, subject to any contrary provision in the Statute or the Rules.

(2)In addition to the grounds of refusal or postponement specified in Parts 4 and 5, a request for surrender or other assistance that relates to an offence involving the administration of justice may be refused if, in the opinion of the Minister of Justice or Attorney-General, as the case may be, there are exceptional circumstances that would make it unjust or oppressive to surrender the person or give the assistance requested.

Cf Statute, article 70(2)

PART 3 - GENERAL PROVISIONS RELATING TO REQUESTS FOR ASSISTANCE

24.
Requests for assistance—

(1)This Part applies to a request by the ICC for assistance that is made under—

(a)Part 9 of the Statute, namely,—

(i)the provisional arrest, arrest, and surrender to the ICC of a person in relation to whom the ICC has issued an arrest warrant or given a judgment of conviction; or

(ii)the identification and whereabouts of persons or the location of items; or

(iii)the taking of evidence, including testimony under oath, and the production of evidence, expert opinions, and reports necessary to the ICC; or

(iv)the questioning of any person being investigated or prosecuted; or

(v)the service of documents, including judicial documents; or

(vi)facilitating the voluntary appearance of persons as witnesses or experts before the ICC; or

(vii)the temporary transfer of prisoners; or

(viii)the examination of places or sites, including the exhumation and examination of grave sites; or

(ix)the execution of searches and seizures; or

(x)the provision of records and documents, including official records and documents; or

(xi)the protection of victims and witnesses and the preservation of evidence; or

(xii)the identification, tracing and freezing, or seizure of proceeds, property and assets, and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; or

(xiii)any other type of assistance that is not prohibited by the law of New Zealand, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the ICC; or

(b)any of the following articles of the Statute:

(i)article 19(8) (which relates to various steps that the Prosecutor may take with the authority of the ICC):

(ii)article 56 (which relates to various measures that can be taken by the Pre-Trial Chamber):

(iii)article 64 (which relates to various measures that can be taken by the Trial Chamber):

(iv)article 76 (which relates to the imposition of sentence by the Trial Chamber):

(v)article 109 of the Statute (which relates to the enforcement of fines and forfeiture measures).

(2)Nothing in this section—

(a)limits the type of assistance that the ICC may request under the Statute or the Rules (whether in relation to the provision of information or otherwise):

(b)prevents the provision of assistance to the ICC otherwise than under this Act, including assistance of an informal nature.

Cf 1995 No 27 ss 4, 56; Statute, articles 86, 87(1)(a), 93(1)

25.
Requests to be made through authorised channel—

(1)A request for assistance must be made through an authorised channel and,—

(a)in the case of a request to which Part 4 applies, be transmitted to the Minister; or

(b)in any other case, be transmitted to the Attorney-General or a person authorised by the Attorney-General to receive requests.

(2)For the purposes of subsection (1) and section 26(1), an ``authorised channel'' is—

(a)the diplomatic channel to the Minister of Foreign Affairs and Trade; or

(b)any other appropriate channel that New Zealand may designate at the time it ratifies the Statute or at any subsequent time in accordance with the Rules.

(3)This section is subject to section 26 (which relates to urgent requests).

Cf 1999 No 55 s 18(2); Statute, articles 87(1)(a) and (b)

26.
Urgent requests—

(1)In urgent cases a request for assistance (including a request for provisional arrest) may be—

(a)made using any medium capable of delivering a written record:

(b)transmitted through the International Criminal Police Organisation or any other appropriate regional organisation, instead of through an authorised channel.

(2)If a request is made or transmitted in the first instance in the manner specified in subsection (1), it must be followed as soon as practicable by a formal request transmitted in the manner specified in section 25.

Cf Statute, articles 87(1)(b), 91(1), 92(1), 96(1)

27.
Execution of requests—

(1)If the ICC makes a request for assistance, the request must be dealt with in accordance with the relevant procedure under the law of New Zealand (as provided in this Act).

(2)If the request for assistance specifies that it should be executed in a particular manner that is not prohibited by New Zealand law or by using a particular procedure that is not prohibited by New Zealand law, the Attorney-General or the Minister, as the case may be, must use his or her best endeavours to ensure that the request is executed in that manner or using that procedure, as the case may be.

Cf Statute, articles 88, 99(1)

28.
Consultation—

(1)The Attorney-General or the Minister, as the case may be, must consult with the ICC, without delay, if—

(a)a request for assistance is received from the ICC that does not contain or is not accompanied by the appropriate information or the appropriate documents specified in articles 87, 91, 92, 93, or 96 of the Statute; or

(b)the ICC has not provided sufficient information for a request for assistance to be executed; or

(c)in the case of a request for surrender,—

(i)the person sought cannot be located in New Zealand; or

(ii)it appears that the person in New Zealand is clearly not the person named in the warrant or judgment, as the case may be; or

(d)execution of a request for assistance in its current form would require the breach of an existing treaty obligation to another State; or

(e)for any other reason there are or may be difficulties with the execution of a request for assistance received from the ICC.

(2)Before refusing any request for assistance, the Attorney-General or the Minister, as the case may be, must consult with the ICC to ascertain whether the assistance sought could be provided—

(a)subject to conditions; or

(b)at a later date or in an alternative manner.

(3)Without limiting the types of conditions under which assistance may be provided, the Attorney-General may agree to the transmission of documents or information to the Prosecutor on a confidential basis, on the condition that the Prosecutor will use them solely for the purpose of generating new evidence.

(4)If the Attorney-General transmits documents or information subject to the condition specified in subsection (3), the Attorney-General may subsequently consent to the disclosure of such documents or information for use as evidence under the provisions of Parts 5 and 6 of the Statute and in accordance with the Rules.

Cf Statute, articles 93(5), 93(8)(b) and (c), 97

29.
Confidentiality of request—

(1)A request for assistance and any documents supporting the request must be kept confidential by the New Zealand authorities who deal with the request, except to the extent that the disclosure is necessary for execution of the request.

(2)If the ICC requests that particular information that is made available with a request for assistance be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, potential witnesses, and their families, the New Zealand authorities must use their best endeavours to give effect to that request.

(3)In this section, the ``New Zealand authorities'' are—

(a)the Attorney-General:

(b)the Minister:

(c)every member of the police:

(d)every prison officer:

(e)every employee of or contractor engaged by a New Zealand agency that is authorised to deal with the request.

(4)Subsection (2) does not limit subsection (1).

Cf Statute, articles 87(3) and (4)

30.
Response to be sent to ICC—

(1)The Attorney-General or the Minister, as the case may be, must notify the ICC, without delay, of his or her response to a request for assistance and of the outcome of any action that has been taken in relation to it.

(2)If the Attorney-General or the Minister decides, in accordance with the Statute and this Act, to refuse or postpone the assistance requested, in whole or in part, the notice to the ICC must set out the reasons for the decision.

(3)If the request for assistance cannot be executed for any other reason, the notice to the ICC must set out the reasons for the inability or failure to execute the request.

(4)In the case of an urgent request for assistance, any documents or evidence produced in response must, at the request of the ICC, be sent urgently to it.

(5)Documents or evidence provided or produced in response to a request for assistance from the ICC must be transmitted to the ICC in their original language and form.

Cf 1992 No 86 ss 28 and 29; 1995 No 27 s 59; Statute, articles 86, 90(8), 93(6)

Official capacity of suspect or accused no bar to request

31.
Official capacity of person no bar to request—

(1)The existence of any immunity or special procedural rule attaching to the official capacity of any person is not a ground for—

(a)refusing or postponing the execution of a request for surrender or other assistance by the ICC; or

(b)holding that a person is ineligible for surrender, transfer, or removal to the ICC or another State under this Act; or

(c)holding that a person is not obliged to provide the assistance sought in a request by the ICC.

(2)Subsection (1) applies subject to section 66 and section 120, but despite any other enactment or rule of law.

Cf Statute, article 27(2)

PART 4 - ARREST AND SURRENDER OF PERSON TO ICC

Request from ICC for arrest and surrender

32.
Request for arrest and surrender—

(1)This Part applies to a request made by the ICC under article 89(1) of the Statute for the arrest and surrender from New Zealand of—

(a)a person in respect of whom the Pre-Trial Chamber has issued a warrant of arrest under article 58 or article 60 of the Statute for an international crime:

(b)a person who has been convicted by the ICC of an international crime.

(2)This Part applies to a request made under article 92 of the Statute for the provisional arrest of a person accused or convicted of an international crime.

(3)The following provisions of this Part apply subject to sections 55 to 66 (which deal with restrictions on surrender and the execution of a request for surrender):

(a)sections 33 to 35 (which deal with arrest where a request for surrender is received):

(b)sections 36 to 38 (which deal with provisional arrest in urgent cases):

(c)sections 39 to 42 (which deal with remand and bail):

(d)sections 43 to 46 (which deal with eligibility for surrender):

(e)sections 47 to 54 (which deal with surrender and temporary surrender).

Cf Statute, articles 58, 60(5), 91(2)-(4), 92(1)

Arrest where request for surrender received

33.
Minister to request issue of arrest warrant—

(1)If a request for surrender is received, other than a request for provisional arrest referred to in section 32(2), the Minister may notify a District Court Judge in writing that it has been made and request that the Judge issue a warrant for the arrest of the person whose surrender is sought.

(2)If a notice is sent to a Judge under subsection (1), the Minister must also send to the Judge a copy of the request and supporting documents.

(3)The Minister may, if the Minister thinks fit, refuse to notify a District Court Judge under this section.

Cf 1995 No 27 s 6; 1999 No 55 s 19(1) and (3); Statute, article 59(1)

34.
Issue of arrest warrant—

After receiving a request under section 33, the District Court Judge must issue a warrant in the prescribed form for the arrest of the person if the Judge is satisfied on the basis of information presented to him or her that—

(a)the person is or is suspected of being in New Zealand or may come to New Zealand; and

(b)there are reasonable grounds to believe that that person is the person to whom the request for surrender from the ICC relates.

Cf 1995 No 27 s 7; 1999 No 55 s 19(2)

35.
Cancellation of warrant—

(1)The Minister may, at any time, by notice in writing, order the cancellation of the warrant.

(2)If the Minister orders the cancellation of a warrant under subsection (1), the warrant ceases to have effect and any person arrested under the warrant must be released, unless the person is otherwise liable to be detained in custody.

Cf 1995 No 27 s 8

Provisional arrest in urgent cases

36.Provisional arrest warrant may be issued—

(1)A District Court Judge may issue a provisional warrant in the prescribed form for the arrest of a person if the Judge is satisfied on the basis of the information presented to him or her that—

(a)a warrant for the arrest of a person has been issued by the ICC or, in the case of a convicted person, a judgment of conviction has been given in relation to an international crime; and

(b)the person named in the warrant or judgment is or is suspected of being in New Zealand or may come to New Zealand; and

(c)it is necessary or desirable for an arrest warrant to be issued urgently.

(2)A warrant may be issued under this section even though no request for surrender has yet been made or received from the ICC.

Cf 1999 No 55 s 20; Statute, article 92

37.
Notice to be given to Minister—

(1)If a District Court Judge issues a provisional arrest warrant under section 36, the applicant for the warrant must report the issue of the warrant to the Minister without delay.

(2)The applicant must include in the report to the Minister a copy of the warrant issued by the ICC, or the judgment of conviction, as applicable, and the other documentary evidence that the applicant produced to the Judge.

(3)On receipt of the report under subsection (1), the Minister may, if the Minister thinks fit, order that the proceedings be discontinued.

(4)If the Minister orders that the proceedings be discontinued, the Minister may cancel any warrant of arrest and order the discharge of any person arrested under the warrant.

(5)The Minister must notify the District Court of any action taken under subsection (3) or subsection (4).

Cf 1999 No 55 s 21

38.
Procedure where provisional arrest warrant issued—

(1)If a person has been arrested on a provisional arrest warrant issued under section 36, the following provisions apply:

(a)the hearing of the proceedings must not proceed until the District Court receives from the Minister a notice in writing stating that a request for the surrender of the person has been transmitted to the Minister in the manner specified in section 25:

(b)pending the receipt of the notice from the Minister, the proceedings may from time to time be adjourned:

(c)the District Court must set a date by which the notice is to be transmitted to it, which must be a reasonable time having regard to—

(i)any provision in the Rules that prescribes the maximum period for transmission by the ICC of the request and supporting documents to the requested State:

(ii)if there is no such provision, the time it is likely to take for the ICC to prepare and transmit the request and supporting documents to New Zealand:

(iii)the time it is likely to take for the Minister to consider the request after receipt and for the notice to be transmitted to the District Court:

(d)if the District Court does not receive the notice within the time fixed by the District Court under paragraph (c), and does not extend that time under subsection (2), the District Court must discharge the person.

(2)The District Court may, from time to time, in its discretion, extend any time fixed by it under subsection (1)(c).

Cf 1999 No 55 s 23(4); Statute, article 92(1)

Remand and bail

39.
Procedure following arrest—

(1)A person arrested on a warrant issued under section 34 or section 36 must, unless sooner discharged, be brought before a District Court as soon as possible.

(2)The person—

(a)is not entitled to bail as of right; and

(b)may not go at large without bail.

[(3)If the District Court remands the person on bail, the District Court may impose any conditions of bail that the District Court thinks fit in addition to any conditions that the District Court may impose under section 31(1) to (3) of the Bail Act 2000 (as applied by section 49 of that Act).]

(4)Without limiting the other factors that may be taken into account in making a decision to grant bail, the District Court must have regard to the following:

(a)the gravity of the alleged crimes:

(b)whether there are urgent and exceptional circumstances that favour the grant of bail; and

(c)whether necessary safeguards exist to ensure that New Zealand can fulfil its duty under the Statute to surrender the person to the ICC.

(5)Without limiting the other factors that may be taken into account in making a decision to grant bail, the District Court may not consider whether any warrant of arrest or judgment issued by the ICC was properly issued in accordance with the Statute.

Cf 1999 No 55 s 23(1)-(3); Statute, article 59(2)-(4)

40.
Procedure for bail—

(1)If an application for bail is made, the Minister must notify the ICC which may make recommendations to the Minister that must be conveyed to the District Court that is considering the application.

(2)Before rendering its decision, the District Court must consider any recommendations that the ICC has made, including any recommendations on measures to prevent the escape of the person.

(3)If the person is granted bail, the Minister must, if the ICC requests, provide periodic reports to the ICC on the person's bail status.

(4)This section applies with any necessary modifications to any bail application made during the period until the person is surrendered to the ICC or discharged according to law.

Cf 1999 No 55 s 44(1)-(3); Statute, article 59(2)-(6)

41.
Powers of District Court—

(1)In proceedings under this Part, except as expressly provided in this Act or in regulations made under section 179 or section 180,—

> (a)a District Court has the same jurisdiction and powers, and must conduct the proceedings in the same manner, as if the person were charged with a summary offence alleged to have been committed within the jurisdiction of New Zealand; and
>
> [(b)the following provisions apply to the proceedings, so far as applicable and with the necessary modifications:
>
> > (i)Part 2 and sections 203, 204, and 206 of the Summary Proceedings Act 1957:
> >
> > (ii)Parts 1 (except sections 9 to 12), 2, and 3 of the Bail Act 2000:
> >
> > (iii)section 121 of the Criminal Justice Act 1985.]

(2)Despite section 4 of the Summary Proceedings Act 1957, a District Court presided over by 1 or more Justices or 1 or more Community Magistrates does not have jurisdiction to conduct proceedings under this Part.

(3)Despite subsections [(1) and (2)] of section 46 of the Summary Proceedings Act 1957, a decision to remand a person in custody or on bail may be made only by a Judge.

(4)Repealed.

[(5)Section 171 of the Summary Proceedings Act 1957 and sections 52 and 54 of the Bail Act 2000 apply, so far as applicable and with the necessary modifications, to a person who is detained under section 46 or section 49.]

[(6)To avoid doubt, if an application is made for the variation of conditions of bail of a person who is detained under section 46 or section 49, the procedure in section 40(1) and (2) applies.]

Cf 1999 No 55 s 43

42.
Detention in place other than prison—

(1)This section applies if the District Court orders the detention of a person at any time under this Part.

(2)If the District Court concludes that detaining the person in prison would risk the person's life or health or be undesirable for any reason, the District Court may order that the person be held in custody—

(a)at the place where the person is for the time being; or

(b)at any other place that the District Court considers appropriate, having regard to the risk or reason involved.

(3)The person may be held as specified in subsection (2) until—

(a)the person can be detained in a prison without risk to that person's life or health; or

(b)the reason for not detaining the person in prison no longer applies; or

(c)the person is surrendered or discharged according to law.

(4)In making the order specified in subsection (2), the District Court must have regard to any recommendations that the ICC may make regarding the place of the person's detention.

Cf 1999 No 55 s 52; Statute, article 59(5)

Eligibility for surrender

43.
Determination of eligibility for surrender—

(1)If a person is brought before a District Court under this Part, the District Court must determine whether the person is eligible for surrender in relation to the international crime or crimes for which surrender is sought.

(2)Subsection (1) applies subject to sections 38 and 45.

(3)The person is eligible for surrender if—

(a)a warrant for the arrest of the person issued by the ICC or a judgment of conviction for an international crime given by the ICC has been produced to the District Court; and

(b)the District Court is satisfied that the person is the person to whom the warrant or judgment relates; and

(c)the District Court is satisfied that the person was arrested in accordance with the proper process as provided in article 59(2)(b) of the Statute; and

(d)the District Court is satisfied that the person's rights were respected as provided in article 59(2)(c) of the Statute.

(4)Neither subsection (3)(c) nor subsection (3)(d) applies unless the person puts the matter at issue.

(5)Despite subsection (3), the person is not eligible for surrender if the person satisfies the District Court that a mandatory restriction on the surrender of the person specified in section 55(1) applies.

(6)Despite subsection (3), in the proceedings under this section,—

(a)the person to whom the proceedings relate is not entitled to adduce, and the District Court is not entitled to receive, evidence to contradict an allegation that the person has engaged in conduct that constitutes the offence for which the surrender is sought; and

(b)in the case of a person accused of an offence, nothing in this section requires evidence to be produced or given at the hearing to establish, according to the law of New Zealand, that the trial of the person would be justified if the conduct constituting the offence had occurred within the jurisdiction of New Zealand.

Cf 1999 No 55 s 45; Statute, article 59(2)

44.
Adjournment of hearing—

(1)The District Court may adjourn the hearing for such period as it considers reasonable to allow a deficiency or deficiencies to be remedied if—

(a)a document or documents containing a deficiency or deficiencies of relevance to the proceedings are produced; and

(b)the District Court considers the deficiency or deficiencies to be of a minor nature.

(2)Subsection (1) does not limit the circumstances in which the District Court may adjourn a hearing.

45.
Surrender by consent—

(1)A person may at any time notify the District Court that he or she consents to being surrendered to the ICC for the international crime or crimes for which surrender is sought.

(2)The District Court may accept the notification of consent under subsection (1) if—

(a)the person is before the District Court when notification of the consent to surrender is given; and

(b)the person has been legally represented in the proceedings; and

(c)the District Court is satisfied that the person has freely consented to the surrender in full knowledge of its consequences.

(3)Nothing in this section prevents a person, in respect of whom a determination of eligibility for surrender is made by the District Court under section 43, from subsequently notifying the Minister that the person consents to surrender.

(4)To avoid doubt,—

(a)a person arrested under a provisional warrant may consent to surrender before a request for surrender is received, in which case the Minister may make a surrender order as if a request for surrender had been received; and

(b)if paragraph (a) applies, section 38(1)(a) does not apply.

Cf 1999 No 55 s 28; Statute, article 92(3)

46.
Procedure following determination on eligibility or consent to surrender—

(1)This section applies if—

(a)the District Court has determined in accordance with section 43 that a person is eligible for surrender; or

(b)a person has consented to surrender to the ICC in accordance with section 45.

(2)If this section applies, the District Court must—

(a)issue a warrant for the detention of the person in a prison or other place authorised in accordance with section 42 of this Act or section [171(2)] of the Summary Proceedings Act 1957 pending the surrender of the person to the ICC or the person's discharge according to law; and

(b)send to the Minister a copy of the warrant of detention and such report on the case as the court thinks fit; and

(c)inform a person to whom subsection (1)(a) applies that,—

(i)subject to section 70, the person will not be surrendered until the expiration of 15 days after the date of the issue of the warrant; and

(ii)during that time the person has the right to make an application for a writ of habeas corpus; and

(iii)the person has the right to lodge an appeal under section 67; and

(d)inform a person to whom subsection (1) applies that the Minister must determine whether to issue a surrender order before the person can be surrendered to the ICC; and

(e)inform the person that if a surrender order is made and the person is not removed within 2 months, the person may apply to be discharged under section 74.

(3)If the District Court issues a warrant under subsection (2), the District Court may grant bail to the person in accordance with section 39.

(4)If the District Court is not satisfied that the person is eligible for surrender, it must discharge the person, unless under section 69 it orders that the person continue to be detained or issues a warrant for the arrest and detention of the person, pending the determination of an appeal under section 67.

Cf 1999 No 55 s 46

Surrender and temporary surrender

47.
Minister must determine whether person to be surrendered—

(1)If the District Court issues a warrant for the detention of a person under section 46, the Minister must determine whether to order that the person be surrendered.

(2)The Minister must make a surrender order in respect of the person unless—

(a)the Minister is satisfied that surrender of the person must be refused because a mandatory restriction on surrender specified in section 55(1) applies; or

(b)the Minister is satisfied that 1 of the discretionary restrictions on surrender specified in section 55(2) applies and that it is appropriate in the circumstances that surrender be refused; or

(c)the Minister postpones the execution of a request for surrender in accordance with section 56; or

(d)the Minister makes a temporary surrender order under section 49.

(3)The Minister must not make a surrender order in respect of a person until the later of the following times:

(a)until the expiration of 15 days after the date of the issue of the warrant of detention of that person under section 46(2)(a); or

(b)if an appeal, or an application for review or habeas corpus in respect of a determination under this Act, or any appeal from such an appeal or application, is pending, until after the date that the proceedings are finally determined and the result is that the person is eligible to be surrendered.

(4)Nothing in subsection (3) applies to—

(a)a person who has consented to surrender under section 45, whether before the District Court or subsequently by notice to the Minister; or

(b)a person to whom section 43 applies but who has, in accordance with section 70, notified the Minister that he or she has waived—

(i)the right to make an application for a writ of habeas corpus within 15 days after the date of the issue of the warrant; and

(ii)the right, in relation to every international crime for which the District Court has determined that the person is eligible to be surrendered, to lodge an appeal under section 67; or

(c)a person whom the District Court determines is eligible for surrender for 2 or more international crimes and who, under section 70, has waived—

(i)the right to make an application for habeas corpus within 15 days after the date of the issue of the warrant; and

(ii)the right, in relation to only 1 or some of those international crimes, to lodge an appeal under section 67,—

if the ICC withdraws its request for the surrender of the person for the international crime or crimes to which the waiver does not relate.

(5)If the Minister makes a surrender order in respect of a person described in section 4(2), the Minister may arrange for any approvals, authorities, and permissions that may be needed to be obtained before surrender, including the variation, cancellation, or suspension of the sentence, or of any conditions of the sentence.

(6)Subject to section 48, once the Minister has made a surrender order, the Minister must use his or her best endeavours to ensure that the person is delivered up to the ICC without delay in accordance with this Act and any applicable Rules.

Cf 1999 No 55 s 50; Statute, article 59(1) and (7)

48.
Surrender order may take effect at later date—

(1)This section applies if the Minister has determined under section 47 that in all other respects it is appropriate to make a surrender order, but the person is liable to be detained in a prison because of a sentence of imprisonment imposed for a different offence against the law of New Zealand.

(2)If this section applies, the Minister may, after consultation with the ICC, instead of making a surrender order that has immediate effect, or a temporary surrender order under section 49, make an order for the surrender of the person that is to come into effect when the person ceases to be liable to be detained.

Cf 1999 No 55 s 32; Statute, article 89(4)

49.
Temporary surrender to ICC—

(1)This section applies if—

(a)the request by the ICC for surrender relates to an international crime of which the person is accused; and

(b)the Minister has determined under section 47 that in all other respects it is appropriate to make a surrender order but the person sought is either—

(i)the subject of proceedings for a different offence against New Zealand law that has not been finally disposed of; or

(ii)liable to be detained in a prison because of a sentence of imprisonment imposed for a different offence against the law of New Zealand; and

(c)after consultation by the Minister with the ICC, the ICC requests that the person be surrendered temporarily.

(2)If this section applies, the Minister may make a temporary surrender order in respect of the person.

(3)Before making a temporary surrender order, the Minister may seek undertakings from the ICC relating to 1 or more of the following matters:

(a)the return of the person to New Zealand:

(b)the custody of the person while travelling to and from and while in the ICC's jurisdiction:

(c)such other matters, if any, that the Minister thinks appropriate.

Cf 1999 No 55 s 33(1) and (2); Statute, article 89(4)

50.
Decision on return to New Zealand after trial—

(1)The Minister must review whether it is appropriate for a person who has been surrendered to the ICC under a temporary surrender order to be returned to New Zealand in accordance with undertakings received from the ICC if the person is convicted by the ICC of an international crime and sentenced to imprisonment.

(2)The Minister may determine that he or she no longer requires the undertaking relating to return to be complied with and, if so, must inform the ICC without delay.

51.
Request for return to ICC after temporary surrender—

(1)The Minister may make a surrender order in relation to a person who was surrendered to the ICC under a temporary surrender order if—

(a)the person has been convicted by the ICC of an international crime and sentenced to imprisonment; and

(b)the person is returned to New Zealand in order for the New Zealand proceedings or sentence to be completed; and

(c)the ICC makes a request at any time before the person is no longer the subject of New Zealand proceedings or ceases to be liable to be detained in a New Zealand prison, that, when he or she is no longer the subject of proceedings or ceases to be so liable, the person be surrendered to serve the sentence imposed by the ICC.

(2)Before making an order under subsection (1), the Minister must determine in accordance with section 47(2) that the person is to be surrendered.

(3)If a surrender order is made under this section, the order takes effect on the same day that the person ceases to be subject to the New Zealand proceedings or ceases to be liable to be detained in a New Zealand prison.

Cf 1999 No 55 s 34

52.
New Zealand sentence continues to run—

(1)If a person who is subject to a sentence of imprisonment is released from a New Zealand prison under a surrender order made under section 47 or a temporary surrender order made under section 49, the person is to be treated, while in custody in connection with the request or the crime to which the request related, as the case may be (including custody outside New Zealand), as being in custody for the purposes of the New Zealand sentence, which continues to run.

(2)If, while a person is within the jurisdiction of the ICC under a temporary surrender order or surrender order, the person ceases to be liable to be detained in a New Zealand prison, the Minister must inform the ICC that any undertakings relating to custody referred to in section 49(3)(a) and section 49(3)(b) no longer need to be complied with.

(3)Nothing in this section affects the ICC's power to direct that any sentence of imprisonment that it imposes is to be cumulative on a sentence imposed under New Zealand law.

Cf 1999 No 55 s 33(3) and (4)

53.
Form and execution of surrender order or temporary surrender order—

A surrender order made under section 47 or a temporary surrender order made under section 49 must be in the prescribed form, if any, and must—

(a)specify all the international crimes in relation to which the person is being surrendered; and

(b)either—

(i)require the person in whose custody the person to be surrendered is being held (if the person is being held in custody) to release the person to be surrendered into the custody of a member of the police, or a prison officer; or

(ii)if the person to be surrendered is on bail, authorise any member of the police to take the person into custody; and

(c)authorise the police officer, or prison officer, as the case may be, to transport the person in custody and, if necessary or convenient, to detain the person in custody, for the purpose of enabling the person to be placed in the custody of a person who is, in the opinion of the Minister, duly authorised to receive the person to be surrendered in the name of and on behalf of the ICC; and

(d)authorise the duly authorised person referred to in paragraph (c) to take the person to be surrendered into custody and transport the person out of New Zealand as soon as practicable to the ICC to be dealt with there according to law.

Cf 1999 No 55 s 67

54.
Surrender to State of enforcement—

(1)If a request for surrender relates to a convicted person who has escaped from custody and the ICC directs, under article 111 of the Statute, that the person be delivered to the State in which the person was serving the sentence or to any other State designated by the ICC, the Minister must arrange for the person to be delivered to the State specified in the direction.

(2)In any case in which subsection (1) applies, the surrender order may specify that the person be surrendered into the custody of duly authorised representatives of the State specified in the direction.

Cf Statute, article 111

Restrictions on surrender

55.
Refusal of surrender—

(1)The Minister must refuse a request by the ICC for the surrender of a person if—

(a)there have been previous proceedings against the person and section 57(4) applies; or

(b)the ICC determines that the case is inadmissible and section 59(3) or section 60(2) applies; or

(c)section 66(3) applies.

(2)The Minister may refuse a request by the ICC for the surrender of a person if—

(a)there are competing requests from the ICC and a State that is not a party to the Statute relating to the same conduct and section 63(4) applies; or

(b)there are competing requests from the ICC and a State that is not a party to the Statute relating to different conduct and section 64(3) applies.

(3)To avoid doubt,—

(a)the only grounds on which surrender to the ICC may be refused are those specified in this section and, if applicable, section 23(2) (which relates to offences involving the administration of justice); and

(b)the restrictions on surrender specified in the Extradition Act 1999 do not apply in relation to a request for surrender from the ICC.

56.
Postponement of execution of request for surrender—

(1)The Minister may postpone the execution of a request for surrender under this Part at any time before the person sought is surrendered if, and only if,—

(a)a ruling on admissibility of the kind specified in section 57(1) or section 59(1) or section 60 is pending before the ICC; or

(b)the request would interfere with an investigation or prosecution for a different offence against New Zealand law, as provided in section 58; or

(c)a request of the kind referred to in section 66(1)(c) is made to the ICC.

(2)Even if a case is one to which subsection (1) applies, the Minister may decide not to postpone the execution of the request; and, in that event, the Minister may take such steps under this Part as may be appropriate in the circumstances, including making a surrender order with immediate effect under section 47 or with effect at a later date under section 48 or a temporary surrender order under section 49.

(3)If the Minister postpones the execution of the request, the postponement may be for a reasonable time and may, if the Minister considers it desirable, be extended from time to time.

(4)A decision by the Minister to postpone the execution of a request—

(a)does not limit or affect—

(i)the District Court's ability to accept notification of consent to the surrender:

(ii)the ability to continue to detain a person under any warrant issued under this Part:

(b)does not affect the validity of any act that has been done or any warrant or order made under this Part before the decision was made.

(5)If no decision on the execution of the request for surrender is made within 6 months after the date of the Minister's decision to postpone the execution of the request, the person may apply to a Judge of the High Court to be discharged.

(6)If an application to be discharged is made under subsection (5), the Judge may, on proof that reasonable notice of the intention to make the application has been given to the Minister, unless sufficient cause is shown against the discharge,—

(a)discharge any order made under this Act:

(b)order the discharge of the person from the place where the person is detained, if the person is not liable to be detained under any other order for detention.

57.
Previous proceedings against person sought—

(1)This section applies if the person whose surrender is sought alleges that—

(a)the case is one to which article 20(1) of the Statute applies (because it relates to conduct that formed the basis of crimes for which the person has been convicted or acquitted by the ICC); or

(b)the person has been tried by another court for conduct also proscribed under article 6, 7, or 8 of the Statute and the case is not one to which paragraphs (a) and (b) of article 20(3) of the Statute applies.

(2)If this section applies, the Minister must immediately consult with the ICC to determine if there has been a relevant ruling on admissibility under the Statute.

(3)If the ICC has ruled that the case is admissible, surrender cannot be refused on the ground there have been previous proceedings.

(4)If the ICC has ruled that the case is inadmissible under article 20 of the Statute, surrender must be refused on the ground that there have been previous proceedings.

(5)If an admissibility ruling is pending, the Minister may postpone the execution of a request until the ICC has made a determination on admissibility.

Cf Statute, articles 20(1) and (3), 89(2)

58.
Ongoing New Zealand investigation or proceedings involving different conduct—

(1)This section applies if the ICC makes a request for surrender that would interfere with an investigation or proceedings in New Zealand involving different conduct.

(2)If this section applies, the Minister may, after consultation with the ICC,—

> (a)proceed with the execution of the request in accordance with section 56(2), despite the New Zealand investigation or proceedings; or
>
> (b)postpone the execution of the request until the New Zealand investigation or proceedings have been finally disposed of.

(3)Nothing in this section limits or affects section 48 which allows the Minister to make a surrender order that comes into force at a later date if a person is serving a sentence for a different offence against New Zealand law.

Cf Statute, article 94

59.
Person being prosecuted in New Zealand for same conduct—

(1)This section applies if—

> (a)the ICC makes a request for surrender; and
>
> (b)the request relates to conduct that would constitute an offence under New Zealand law; and
>
> (c)either—
>
> > (i)the conduct is being investigated or prosecuted in New Zealand; or
> >
> > (ii)the conduct had been investigated in New Zealand and a decision was made not to prosecute the person sought, that decision not being due to the unwillingness or genuine inability to prosecute; and
>
> (d)a challenge to the admissibility of the case is being or has been made to the ICC under article 19(2)(b) of the Statute.

(2)If this section applies, the Minister may postpone the execution of the request for surrender until the ICC has made its determination on admissibility.

(3)If the ICC determines that the case is inadmissible, surrender must be refused.

(4)If the ICC determines that the case is admissible and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

Cf Statute, articles 17(1), 19(2)(b), 95

60.
Other challenges to admissibility—

(1)If the ICC is considering an admissibility challenge under article 18 or article 19 of the Statute, other than a challenge of the kind referred to in section 57 or section 59, the Minister may postpone the execution of a request under this Part pending a determination by the ICC.

(2)If the ICC determines that the case is inadmissible, surrender must be refused.

(3)If the ICC determines that the case is admissible, and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

Cf Statute, article 95

61.
Request from ICC and other State relating to same conduct—

If a request for surrender of a person is received from the ICC and 1 or more States also request the extradition of the person for the same conduct that forms the basis of the crime for which the ICC seeks the person's surrender, the Minister—

(a)must notify the ICC and the requesting State of that fact:

(b)must determine, in accordance with section 62 or section 63, but despite section 99 of the Extradition Act 1999, whether the person is to be surrendered to the ICC or to the requesting State.

Cf Statute, article 90(1)

62.
Procedure where competing request from State Party—

(1)If section 61 applies and the requesting State is a party to the Statute, priority must be given to the request from the ICC if—

(a)the ICC has, under article 18 or article 19 of the Statute, made a determination that the case in respect of which surrender is sought is admissible and that determination takes into account the investigation or prosecution conducted by the requesting State in respect of its request for extradition; or

(b)the ICC makes such a determination after receiving notification of the competing request.

(2)If the request is one to which subsection (1)(b) relates, then, pending the ICC's determination,—

(a)the steps required to be taken under the Extradition Act 1999 in relation to a request for extradition may continue to be taken; but

(b)No person may be surrendered under that Act unless and until the ICC makes its decision on admissibility and determines that the case is inadmissible.

Cf Statute, article 90(2)

63.
Procedure where competing request from non-State Party—

(1)If section 61 applies and the requesting State is not a party to the Statute, priority must be given to the request for surrender from the ICC if—

(a)New Zealand is not under an international obligation to extradite the person to the requesting State; and

(b)the ICC has determined under article 18 or article 19 of the Statute that the case is admissible.

(2)If section 61 applies and the requesting State is not a party to the Statute, the request for extradition may continue to be dealt with if—

(a)New Zealand is not under an international obligation to extradite the person to the requesting State; and

(b)the ICC has not yet determined under article 18 and article 19 of the Statute that the case is admissible.

(3)Despite subsection (2), no person may be surrendered under the Extradition Act 1999 unless and until the ICC makes its decision on admissibility and determines that the case is inadmissible.

(4)If section 61 applies, the requesting State is not a party to the Statute, and New Zealand is under an international obligation to extradite the person to the requesting State, the Minister must determine whether to surrender the person to the ICC or extradite the person to the requesting State.

(5)Section 99(1) of the Extradition Act 1999 does not apply to a determination made under subsection (4).

(6)In making the determination under subsection (4), the Minister must consider all the relevant factors including, without limitation,—

(a)the respective dates of the requests; and

(b)the interests of the requesting State, including, if relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought; and

(c)the possibility of subsequent surrender between the ICC and the requesting State.

Cf Statute, article 90(4)-(6)

64.
Request from ICC and other State relating to different conduct—

(1)If a request for surrender of a person is received from the ICC and a request for the extradition of that person is received from 1 or more States for conduct other than that which constitutes the crime for which the ICC seeks the person's surrender, the Minister must determine whether the person is to be surrendered to the ICC or to the requesting State.

(2)If New Zealand is not under an existing international obligation to extradite the person to the requesting State, priority must be given to the request from the ICC.

(3)If New Zealand is under an existing international obligation to extradite the person to the requesting State, the Minister must determine whether to surrender the person to the ICC or to extradite the person to the requesting State.

(4)In making the determination under subsection (3), the Minister must consider all the relevant factors, including, without limitation, those matters specified in section 63 of this Act and section 99 of the Extradition Act 1999, but must give special consideration to the relative seriousness of the offences for which surrender is sought.

Cf Statute, article 90(7)

65.
Notification of decision on extradition to requesting State—

(1)If, following notification under article 90 of the Statute, the ICC has determined that a case is inadmissible and the Minister subsequently refuses extradition of the person to the requesting State under the Extradition Act 1999, the Minister must notify the ICC of this decision.

(2)The obligation in this section is in addition to the requirement in section 30 for the Minister to respond formally to the request from the ICC.

Cf Statute, article 90(8)

66.
Conflict with obligations to another State—

(1)This section applies if—

(a)the ICC makes a request for surrender; and

(b)the ICC has not previously made a final determination on whether or not article 98 of the Statute applies to that request; and

(c)a request is made to the ICC to determine whether or not article 98 of the Statute applies to the request for surrender.

(2)If this section applies, the Minister may postpone the request for surrender until the ICC advises whether or not it intends to proceed with the request for surrender.

(3)If the ICC advises that it does not intend to proceed with the request, surrender must be refused.

(4)If the ICC advises that it intends to proceed with the request for surrender, and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

Cf Statute, article 98

Appeals against determinations of eligibility for surrender

67.
Appeal on question of law only by way of case stated—

(1)This section applies if a District Court determines under section 43 that a person is or is not eligible for surrender in relation to any crime for which surrender is sought, and either party considers the determination erroneous in point of law.

(2)If this section applies, the party may appeal against the determination to the High Court by way of case stated for the opinion of the High Court on a question of law only.

(3)To lodge an appeal the party must, within 15 days after the determination, file in the office of the court that made the determination a notice of appeal in the prescribed form.

Cf 1999 No 55 s 68

68.
Application to appeal of certain provisions of Summary Proceedings Act 1957 [and Bail Act 2000]—

(1)The following provisions of the Summary Proceedings Act 1957 apply with any necessary modifications to an appeal under this Part as if it were an appeal under Part 4 of that Act against the determination by a District Court of an information or complaint:

(a)section 107(3) to (8) (appeal on question of law only by way of case stated):

(b)section 108 (no appeal on ground of improper admission or rejection of evidence):

(c)section 109 (District Court Judge or Justice may refuse a case if appeal frivolous):

(d)section 110 (certiorari not to be required when appeal upon case stated):

(e)section 111 (case may be sent back for amendment):

(f)section 113 (appeal on point of law may be removed into Court of Appeal):

(g)section 123 (powers of Judge of High Court as to extension of time):

(h)Repealed.

(i)section 129 (abandonment of appeal):

(j)section 130 (presentation of case by party in custody):

(k)section 131 (power of High Court to direct rehearing of information or complaint):

(l)section 133 (dismissal of appeal for non-prosecution):

(m)section 134 (registrar to certify decision on appeal):

(n)section 136 (custody of person after determination of appeal):

(o)section 143 (no Court fees payable on appeal by person sentenced to detention):

(p)section 144 (appeal to Court of Appeal).

(2)Section 47 of the Bail Act 2000 (which relates to the surrender of an appellant released on bail) applies with any necessary modifications to an appeal under this Part as if it were an appeal under Part 4 of the Summary Proceedings Act 1957 against the determination by a District Court of an information or complaint.

Cf 1999 No 55 s 69

69.
Custody pending determination of appeal—

(1)A District Court may order that the person who is the subject of the determination continue to be detained or, as the case may be, issue a warrant for the arrest and detention of the person, pending the determination of the appeal if—

(a)the District Court makes a determination under section 43; and

(b)immediately after the District Court makes the determination, either party informs the District Court that the party intends to appeal against the determination.

(2)Any District Court or the High Court may order that the person who is the subject of the determination continue to be detained or, as the case may be, issue a warrant for the arrest and detention of the person, pending the determination of the appeal if—

(a)a District Court makes a determination under section 43; and

(b)either party files a notice of appeal against the determination.

(3)If a person is detained under an order made under this section or is arrested and detained under a warrant issued under this section, sections 39 to 42 apply to the detention of the person with any necessary modifications as if the appeal proceedings were proceedings under section 43 to determine whether or not the person is eligible for surrender.

Cf 1999 No 55 s 70

70.
Waiver of rights to apply for habeas corpus or to lodge appeal—

Without limiting section 45, a person whose surrender is sought may, by a waiver in the prescribed form, waive the following rights:

(a)the right to make an application for a writ of habeas corpus within 15 days after the issue of a warrant of detention; and

(b)the right, in relation to any international crime or crimes for which the District Court has determined that the person is eligible for surrender, to lodge an appeal under this Part.

Cf 1999 No 55 s 71

71.
Powers of court on appeal—

(1)The High Court must hear and determine the question or questions of law arising on any case transmitted to it, and do 1 or more of the following things:

(a)reverse, confirm, or amend the determination in respect of which the case has been stated:

(b)remit the determination to the District Court for reconsideration together with the opinion of the High Court on the determination:

(c)remit the determination to the District Court with a direction that the proceedings to determine whether the person is eligible for surrender be reheard:

(d)make any other order in relation to the determination that it thinks fit.

(2)In hearing and determining the question or questions of law arising on any case transmitted to it, the High Court—

(a)must not have regard to any evidence of a fact or opinion that was not before the District Court when it made the determination appealed against; and

(b)may in the same proceeding hear and determine any application for a writ of habeas corpus made in respect of the detention of the person whose surrender is sought.

Cf 1999 No 55 s 72

72.
Further provisions relating to powers of court on appeal—

(1)If the appeal is against a determination that a person is eligible for surrender, and the High Court reverses the determination in respect of which the case has been stated, the High Court must also either—

(a)discharge the person; or

(b)remit the determination to the District Court with a direction that the proceedings to determine whether the person is eligible for surrender be reheard.

(2)If the appeal is against a determination that a person is eligible for surrender in respect of 2 or more international crimes, and the High Court determines that the determination includes an error of law that relates to only 1 or some of those international crimes, the High Court may amend the determination and—

(a)discharge the person in respect of that international crime or those international crimes; or

(b)remit the determination to the District Court with a direction that the proceedings to determine whether the person is eligible for surrender be reheard in respect of that international crime or those international crimes.

(3)Despite subsections (1) and (2), if an appeal is against a determination that a person is eligible for surrender, and the High Court determines that there has been an error of law, it may nevertheless decline to reverse or amend the determination in respect of which the case has been stated if it considers that no substantial wrong or miscarriage of justice has occurred and that the determination ought to be upheld.

(4)If the appeal is against a determination that a person is not eligible for surrender, and the High Court determines that the determination includes an error of law, the High Court may—

(a)exercise the powers of a District Court under section 46 as if it were a District Court, although subsection (2)(c) of that section does not apply:

(b)if it remits the determination to the District Court, issue a warrant for the arrest and detention of the person pending the District Court's reconsideration of the determination or rehearing of the proceedings to determine whether the person is eligible for surrender; and section 69(3) applies to any warrant issued under this paragraph as if the warrant were issued under that section.

(5)Subsections (1), (2), and (4) do not limit section 71.

Cf 1999 No 55 s 73

Discharge of person

73.
Discharge of person if Minister declines to order surrender—

If the Minister determines under section 47 that the person is not to be surrendered, the person must be discharged from custody immediately unless the person is subject to any other order for detention.

Cf 1999 No 55 s 35

74.
Discharge of person if not surrendered within 2 months—

(1)This section applies if a person is not surrendered and conveyed out of New Zealand under a surrender order or a temporary surrender order made under this Part within 2 months—

(a)after the date of the issue of the warrant for the detention of the person under section 46 pending surrender, if no appeal or application for review or habeas corpus, in respect of a determination under this Act, or any appeal from such an appeal or application, is pending; or

(b)if an appeal, or an application for review or habeas corpus, in respect of a determination under this Act, or any appeal from such an appeal or application, is pending, after the date that the proceedings are finally determined; or

(c)if a surrender order is made under section 48, after the date that the order takes effect.

(2)If this section applies, the person may apply to a Judge of the High Court to be discharged.

(3)If an application to be discharged is made under subsection (2), the Judge may, on proof that reasonable notice of the intention to make the application has been given to the Minister, unless sufficient cause is shown against the discharge,—

(a)discharge the surrender order or temporary surrender order, as the case may be; and

(b)order the discharge of the person from the place where the person is detained, if the person is not liable to be detained under any other order for detention.

Cf 1999 No 55 s 36

75.
Discharge of person if not resurrendered—

(1)If a person has been surrendered under a temporary surrender order made under section 49, nothing in section 74 prevents an order being made under section 51.

(2)Subsection (3) applies if an order is made under section 51 and the person is not surrendered and conveyed out of New Zealand under this Part within 2 months after the date that the person ceases to be liable to be detained under the sentence of imprisonment imposed by a New Zealand court.

(3)If this subsection applies, the person may apply to a Judge of the High Court to be discharged.

(4)If an application to be discharged is made under subsection (3), the Judge may, on proof that reasonable notice of the intention to make the application has been given to the Minister, unless sufficient cause is shown against the discharge,—

(a)discharge the surrender order; and

(b)order the discharge of the person from the place where the person is detained, if the person is not liable to be detained under any other order for detention.

Cf 1999 No 55 s 37

76.
Discharge of person under this Part does not preclude further proceedings—

To avoid doubt, the discharge of a person under any provision of this Part does not preclude further proceedings under this Act, whether or not they are based on the same conduct, to surrender the person to the ICC.

Cf 1999 No 55 s 38; Statute, article 92(4)

Miscellaneous provisions relating to arrest and surrender

77.
Search and seizure on arrest—

(1)If a person is arrested on a warrant issued under this Part, a member of the police may search, without further warrant, the person arrested and may seize any thing, including any sum of money, found on the person or in the person's possession if the member of the police believes on reasonable grounds that the thing on the person or in the person's possession may be evidence as to the commission of any offence in relation to which the warrant to arrest was issued or for which the surrender of the person is sought by the ICC.

(2)If there is no suitable searcher available at the place where the search is to take place, the person to be searched may be taken to another place to be searched.

(3)Nothing in this section limits or affects the right at common law of a constable to search a person on that person's arrest or any power under section 57A of the Police Act 1958.

(4)If any thing is seized under subsection (1) from the person arrested,—

(a)the member of the police must make a report to the Minister specifying the items seized and any other relevant information:

(b)the Minister must, on receipt of the report referred to in paragraph (a), provide the ICC with a report on the seizure.

Cf 1999 No 55 s 82

78.
Disposal of property seized—

(1)If the Minister makes a surrender order or temporary surrender order under this Act, the Minister may also direct that any thing that was seized under section 77 that may be evidence of the offence the person is alleged to have committed or has committed be delivered with the person on the person's surrender to the ICC.

(2)If the person cannot be surrendered or temporarily surrendered by reason of the person's death or escape from custody, the Minister may direct that any thing that was seized under section 77 that may be evidence of the offence the person is alleged to have committed or has committed be delivered up to the ICC.

(3)If a person is discharged under this Act without being surrendered or temporarily surrendered, the Minister may direct that any thing seized under section 77 be returned to the person from whom it was seized.

(4)The Minister may refuse to direct that any thing referred to in subsection (1) or subsection (2) be delivered to the ICC if the thing is required for the investigation of an offence within the jurisdiction of New Zealand.

(5)The Minister may refuse to direct that any thing referred to in subsection (3) be returned to the person if—

(a)the thing is the subject of a dispute as to who is entitled to it; or

(b)the thing is required for the investigation of an offence within the jurisdiction of New Zealand; or

(c)possession of the thing by the person would be unlawful in New Zealand.

Cf 1999 No 55 s 89

79.
Information about time spent in custody in New Zealand—

(1)If the ICC requests the surrender of a person, and that person is detained in a New Zealand prison or any other place at any time pending surrender, the superintendent of the prison or the head of the other place must keep a record of the time spent in custody under . . . as if the person were charged with an offence against the law of New Zealand and were on remand.

(2)The superintendent or the head of the other place must, if requested, provide to the Minister a certificate recording—

(a)the date on which the person was admitted to a prison or any other place to be held in custody in relation to the request; and

(b)the total period during which the person was detained in custody during the process leading to the surrender of the person to New Zealand in relation to the offence or offences; and

(c)whether the person was, at any time during the period in custody in relation to the surrender, also serving a sentence for an offence against New Zealand law.

(3)The Minister must provide to the ICC at the time of the surrender of the person, or as soon as possible after that, a certificate recording the information specified in subsection (2) and such other information relating to any period spent in custody in relation to the surrender as the ICC may request.

Cf 1999 No 55 s 62(1); Statute, article 78(2)

80.
Consent to trial of surrendered person for previous offences—

(1)This section applies if—

(a)a person is surrendered to the ICC under this Act; and

(b)the ICC requests a waiver of the requirements of article 101(1) of the Statute (which relates to the rule of speciality).

(2)If this section applies, the Minister may consent to the person being proceeded against, punished, or detained for conduct committed before surrender (not being the conduct or course of conduct that forms the basis of the crimes for which that person has been surrendered).

(3)The consent given under subsection (2) may relate to the person's surrender to another State.

(4)Before giving consent under subsection (2), the Minister—

(a)may request that additional information be provided in accordance with article 91 of the Statute:

(b)may seek any assurances from the ICC that the Minister thinks fit.

Cf 1999 No 55 s 30(5); Statute, articles 91, 101

PART 5 - DOMESTIC PROCEDURES FOR OTHER TYPES OF CO-OPERATION

Identifying or locating persons or things

81.
Assistance in locating or identifying persons or things—

(1)This section applies if the ICC requests assistance under any of articles 19(8), 56, 64, or 93(1)(a) of the Statute in locating, or identifying and locating, a person or a thing believed to be in New Zealand.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

(a)the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

(b)the person to whom or thing to which the request relates is or may be in New Zealand.

(3)If the Attorney-General gives authority for the request to proceed,—

(a)the Attorney-General must forward the request to the appropriate New Zealand agency; and

(b)that agency must, without delay,—

(i)use its best endeavours to locate or, as the case may be, identify and locate the person to whom or thing to which the request relates; and

(ii)advise the Attorney-General of the outcome of those endeavours.

(4)This section does not give any person a power to enter property in order to locate a person or item.

Cf Statute, articles 19(8), 56, 64, 93(1)(a)

Taking evidence and producing documents

82.
Assistance in gathering evidence—

(1)This section applies if the ICC requests, under any of articles 19(8), 56, 64, or 93(1)(b) of the Statute, that—

(a)evidence be taken in New Zealand; or

(b)documents or other articles in New Zealand be produced.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

(a)the request relates to an investigation being conducted by the Prosecutor or to a proceeding before the ICC; and

(b)there are reasonable grounds for believing that the evidence can be taken or, as the case may be, the documents or other articles can be produced in New Zealand.

Cf 1995 No 27 s 21; Statute, articles 19(8), 56, 64, 93(1)(b)

83.
Taking evidence—

(1)If the Attorney-General gives authority for a request relating to the taking of evidence to proceed, the statement of each witness must be taken in writing on the oath or affirmation of that witness by a District Court Judge.

(2)The Judge who takes evidence under subsection (1), must—

(a)certify that the evidence was taken by the Judge; and

(b)ensure that the evidence, as certified, is sent to the Attorney-General.

Cf 1995 No 27 s 22

84.
Producing documents or other articles—

(1)If the Attorney-General gives authority for a request relating to the production of documents or other articles to proceed, a District Court Judge may make an order requiring their production.

(2)If the documents or other articles are produced, the Judge must send them to the Attorney-General together with a written statement certifying that they were produced to the Judge.

(3)Despite subsection (2), in the case of documents that are produced, the Judge may send to the Attorney-General copies of the documents certified by the Judge to be true copies instead of the originals.

(4)Subsections (2) and (3) apply subject to any contrary order by the Judge.

Cf 1995 No 27 s 23

85.
Protection of witnesses—

(1)The applicable law with respect to compelling a person to appear before Judge under section 83 or section 84 and to give evidence or answer questions, or to produce documents or other articles, is the law specified in subsection (2); and that law applies with any necessary modifications.

(2)For the purposes of subsection (1), the applicable law is the law of New Zealand that applies to the giving of evidence or the answering of questions or the production of documents or other articles on the hearing of a charge against a person for an offence against the law of New Zealand.

(3)Despite subsection (1), for the purposes of section 83 and section 84, the person to whom the investigation being conducted by the Prosecutor, or the proceeding before the ICC, relates is competent but not compellable to give evidence.

(4)Despite subsection (1), a person who is required under section 83 or section 84 to give evidence, or to produce documents or other articles, is not required to give any evidence, or to produce any document or article, that the person could not be compelled to give or produce in the investigation being conducted by the Prosecutor or the proceeding before the ICC.

(5)A person who is required under section 83 or section 84 to give evidence or to produce documents or other articles—

(a)has the same privileges in relation to the answering of questions and the production of documents or articles as if the investigation were being conducted in New Zealand or the proceeding were pending in a New Zealand court, as the case may be; and

(b)must be given a copy of any statement required to be given to a witness under the Rules in the manner and form required by the Rules.

(6)Subsections (4) and (5) apply subject to section 31 and any contrary provision in the Statute or the Rules.

Cf 1995 No 27 s 26

86.
ICC may give evidence certificate—

(1)In this section, ``evidence certificate" means a certificate or declaration that—

(a)is given or made by or on behalf of the ICC; and

(b)specifies or declares whether, under the Statute or the Rules, a specified person or class of persons could or could not be required to answer a specified question or to produce a specified document—

(i)generally; or

(ii)in specified proceedings; or

(iii)in specified circumstances.

(2)An evidence certificate authenticated under subsection (3) is admissible in proceedings for the purposes of the application of section 85(4) as prima facie evidence of the matters stated in the certificate.

(3)A certificate is authenticated for the purposes of subsection (2) if it purports to be—

(a)signed or certified by a Judge, the Registrar, the Deputy Registrar, or a member of the staff of the ICC; or

(b)authenticated in any other manner authorised by the Statute or the Rules.

Cf 1995 No 27 s 27

87.
Certain persons may appear—

(1)The following persons may appear and be legally represented at a hearing held under section 83 or section 84:

(a)the person to whom the proceeding before the ICC or the investigation conducted by the Prosecutor relates:

(b)any other person giving evidence or producing documents or other articles at the hearing:

(c)a representative of the Prosecutor or ICC.

(2)Subsection (1) applies subject to any contrary provision of the Statute or the Rules.

(3)A certificate by a Judge under section 83(2) or section 84(2) must state whether any of the persons specified in subsection (1) were present when the evidence was taken or the documents or other articles were produced.

Cf 1992 No 86 s 34

88.
Powers of Judge may be exercised by Registrar—

(1)Any Judge may authorise a Registrar of the District Court to exercise the powers of a Judge under section 83 or section 84 in respect of any particular case.

(2)An authorisation given under subsection (1) may be revoked at any time by any Judge.

(3)If a matter in respect of which a Registrar has jurisdiction under an authorisation given under subsection (1) appears to the Registrar to be one of special difficulty, the Registrar may refer the matter to a Judge, who may—

(a)dispose of the matter; or

(b)refer it back to the Registrar with such directions as the Judge thinks fit.

(4)Nothing in this section prevents the exercise by any Judge of any jurisdiction or powers conferred on any Registrar under this section.

Cf 1995 No 27 s 28

Questioning persons

89.
Assistance in questioning persons—

(1)This section applies if the ICC requests assistance under any of articles 19(8), 56, 64, or 93(1)(c) of the Statute in questioning a person who is being investigated or prosecuted.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

(a)the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

(b)the person is or may be in New Zealand.

(3)If the Attorney-General gives authority to proceed,—

(a)the Attorney-General must forward the request to the appropriate New Zealand agency; and

(b)that agency must, without delay,—

(i)use its best endeavours to undertake the questioning that the ICC has requested; and

(ii)ensure that the answers to the questions put are recorded in writing and make any other report on the questioning as it considers to be appropriate in the circumstances; and

(iii)advise the Attorney-General of the outcome of those endeavours and, if relevant, deliver the record and any report of the questioning to the Attorney-General.

Cf Statute; articles 19(8), 56, 64, 93(1)(c)

90.
Procedure where questioning by New Zealand agency—

(1)This section applies if there are grounds to believe that a person who is to be questioned by a New Zealand agency following a request under article 91(1)(c) of the Statute has committed a crime within the jurisdiction of the ICC.

(2)If this section applies, the person to be questioned must be informed, before being questioned, that there are grounds to believe that the person has committed a crime within the jurisdiction of the ICC and that the person has the right—

(a)to remain silent, without such silence being a consideration in the determination of guilt or innocence; and

(b)to have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to the person, 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

(c)to be questioned in the presence of a lawyer unless the person voluntarily waives the right to counsel.

(3)If there is any inconsistency between subsection (2) and any other enactment, subsection (2) prevails.

(4)If the person seeks to have legal assistance assigned under subsection (2)(b), that assistance may be provided under the Legal Services Act 1991.

(5)This section does not give any person a power to require another person to answer questions.

Cf Statute, article 55(2)

Assistance in arranging service

91.
Assistance in arranging service of documents—

(1)This section applies if the ICC requests assistance under any of articles 19(8), 56, 58(7), 64, or 93(1)(d) of the Statute in arranging for the service of a document in New Zealand.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

(a)the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

(b)the person or body to be served is or may be in New Zealand.

(3)If the Attorney-General gives authority for the request to proceed, the Attorney-General must forward the request for service to the appropriate New Zealand agency, and that agency must, without delay,—

(a)use its best endeavours to have the process served—

(i)in accordance with any procedure specified in the request; or

(ii)if that procedure would be unlawful or inappropriate in New Zealand, or if no procedure is specified, in accordance with the law of New Zealand; and

(b)transmit to the Attorney-General—

(i)a certificate as to service, if the document is served; or

(ii)a statement of the reasons that prevented service, if the document is not served.

(4)In this section, ``document'' includes—

(a)a summons requiring a person to appear as a witness; and

(b)a summons to an accused that has been issued under article 58(7) of the Statute.

Cf 1995 No 27 s 35; Statute, articles 19(8), 56, 58(7), 59(7), 64, 93(1)(d)

Facilitating appearance of witnesses

92.
Request for voluntary appearance of witness—

(1)This section applies if the ICC requests assistance under any of articles 19(8), 56, 64, or 93(1)(e) of the Statute in facilitating the voluntary appearance of a witness before the ICC.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

(a)the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

(b)the witness's attendance is sought so that the witness can give evidence or information relating to the investigation or proceeding; and

(c)the witness is or may be in New Zealand.

(3)In this section and sections 93 and 94, ``witness'' includes a person who may give expert evidence; but does not include either—

(a)a person who has been accused of an international crime in the proceedings to which the request relates; or

(b)a prisoner who is detained in relation to an offence against New Zealand law.

Cf 1995 No 27 s 30(1); Statute, articles 19(8), 56, 64, 93(1)(e)

93.
Consent required and assurances may be sought—

(1)If the Attorney-General gives authority for the request to facilitate the voluntary appearance of a witness to proceed, the Attorney-General must forward the request to the appropriate New Zealand agency.

(2)The New Zealand agency to which a request is forwarded under subsection (1) must make such inquiries as may be necessary to ascertain if the prospective witness consents to giving evidence or assisting the ICC.

(3)The Attorney-General may, at any time, ask the ICC to give 1 or more of the following assurances:

(a)that the witness will not be prosecuted, detained, or subjected to any restriction of personal freedom by the ICC in respect of all or any specified acts or omissions that occurred before the person's departure from New Zealand:

(b)that the witness will be returned to New Zealand as soon as practicable in accordance with arrangements agreed to by the Attorney-General:

(c)an assurance relating to such other matters as the Attorney-General thinks appropriate.

Cf Statute, article 93(2)

94.
Attorney-General may facilitate appearance—

(1)The Attorney-General may assist in the making of arrangements to facilitate a witness's attendance before the ICC if the Attorney-General is satisfied that—

(a)the prospective witness has consented to giving the evidence or assistance requested; and

(b)the ICC has given adequate assurances where appropriate.

(2)The Attorney-General may—

(a)approve and arrange the travel of the witness to the ICC; and

(b)obtain such approvals, authorities, and permissions as are required for that purpose, including, in the case of a person who although not liable to be detained in a prison is subject to a sentence,—

(i)the variation, discharge, or suspension of the conditions of the person's release from prison; or

(ii)the variation, cancellation, or suspension of the person's sentence, or of the conditions of the person's sentence; and

(c)take such other action for the purposes of subsection (1) as the Attorney-General thinks appropriate.

Cf 1995 No 27 ss 30(2), 31(3)

Temporary transfer of prisoners

95.
Request for temporary transfer of prisoner—

(1)This section applies if the ICC requests assistance under article 93(1)(f) of the Statute in facilitating the temporary transfer to the ICC of a New Zealand prisoner.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

(a)the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

(b)the prisoner's attendance is sought for the purposes of identification or for obtaining evidence or other assistance.

Cf Statute, articles 93(1)(f) and (7)

96.
Consent required and assurances may be sought—

(1)If the Attorney-General gives authority for the request to facilitate the temporary transfer of a New Zealand prisoner to proceed, the Attorney-General must forward the request to the appropriate New Zealand agency.

(2)The New Zealand agency to which a request is forwarded under subsection (1) must make such inquiries as may be necessary to ascertain if the prisoner will consent to the transfer.

(3)The Attorney-General may ask the ICC to give 1 or more of the following assurances:

(a)that the prisoner will not be released from custody without the prior approval of the Attorney-General:

(b)that the prisoner will be returned to New Zealand without delay in accordance with arrangements agreed to by the Attorney-General:

(c)an assurance relating to such other matters as the Attorney-General thinks appropriate.

97.
Attorney-General may arrange for transfer—

(1)The Attorney-General may authorise the temporary transfer of a New Zealand prisoner to the ICC if the Attorney-General is satisfied that—

(a)the prisoner has consented to giving the evidence or assistance requested; and

(b)the ICC has given adequate assurances where appropriate.

(2)If the Attorney-General authorises the temporary transfer of the prisoner to the ICC, the Attorney-General may—

(a)direct that the prisoner be released from the prison in which that person is detained, for the purpose of the transfer to the ICC; and

(b)make arrangements for the prisoner to travel to the ICC in the custody of—

(i)a member of the police; or

(ii)a prison officer; or

(iii)a person authorised for the purpose by the ICC.

(3)A direction given by the Attorney-General under subsection (2) in respect of a prisoner is sufficient authority for the release of the prisoner from the prison in which the prisoner is detained, for the purposes of the direction.

(4)Every person released under a direction given under subsection (2) is to be treated, for the purposes of section 120 of the Crimes Act 1961 (which relates to escaping from lawful custody) and for that purpose only, as continuing to be in the legal custody of the Superintendent of the penal institution from which he or she is so released, while in New Zealand during the period of that release.

(5)If there is any inconsistency between subsection (4) and the Penal Institutions Act 1954, subsection (4) prevails.

Cf 1995 No 27 s 31

98.
Effect of transfer on prisoner's sentence—

(1)If a prisoner who is charged with or convicted of an offence against the law of New Zealand is transferred to the ICC under section 97, the provisions of section 99 of this Act and [section 90 of the Parole Act 2002] apply to any period that the person spends in custody outside New Zealand in connection with the request before sentence is imposed for the New Zealand offence.

(2)If a prisoner who is serving a sentence for a New Zealand offence is transferred to the ICC under section 97,—

(a)the prisoner is to be treated, while in custody outside New Zealand in connection with the request, as being in custody for the purposes of the New Zealand sentence, which continues to run; and

(b)the Attorney-General—

(i)may at any time notify the ICC that the prisoner is no longer required to be kept in custody; and

(ii)must notify the ICC if the prisoner is no longer liable to be detained in a New Zealand prison.

Cf 1995 No 27 s 32

99.
Request for information about time spent in custody overseas—

(1)If a prisoner who is charged with or convicted of an offence against the law of New Zealand (the ``New Zealand offence'') is transferred to the ICC under section 97 before sentence is imposed for the New Zealand offence, the Attorney-General may—

(a)advise the ICC of the date on which the prisoner was sentenced for the New Zealand offence; and

(b)request the ICC to provide a certificate recording the total period during which the prisoner was detained outside New Zealand in connection with the request until sentence was imposed for the New Zealand offence.

(2)A certificate obtained under subsection (1) is presumed to be accurate in the absence of any evidence to the contrary.

(3)The Attorney-General may issue a certificate setting out the date and period specified in subsection (1) if—

(a)the ICC does not provide a certificate within a reasonable time after the Attorney-General makes a request under subsection (1); and

(b)the Attorney-General is satisfied from the information that the Attorney-General has that an accurate calculation can be made of the period referred to in paragraph (b) of subsection (1).

(4)For the purposes of [section 91(4) of the Parole Act 2002], a certificate given by the Attorney-General under subsection (3) has the same effect as a certificate under subsection (1).

(5)Subsection (6) applies if, after the Attorney-General has given a certificate under subsection (3),—

(a)a certificate requested under subsection (1) is obtained from the ICC; and

(b)the time period specified in that certificate is different from that specified in the Attorney-General's certificate.

[(6)If this subsection applies, the new certificate is a substitute certificate for the purposes of section 91(4) of the Parole Act 2002.]

Examination of places or sites

100.

Assistance in examining places or sites—

(1)This section applies if the ICC requests assistance under any of articles 19(8), 56, 64, or 93(1)(g) of the Statute in examining places or sites in New Zealand.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC.

(3)If the Attorney-General gives authority for the request to proceed,—

(a)the Attorney-General must forward the request to the appropriate New Zealand agency; and

(b)that agency must, without delay,—

(i)use its best endeavours to undertake the examination of the place or site in the manner that the ICC has requested; and

(ii)make such report on the examination as it considers to be appropriate in the circumstances; and

(iii)deliver the report of the examination to the Attorney-General.

(4)This section does not give any person a power to enter a place or site.

Cf Statute, articles 19(8), 56, 64, 93(1)(g)

Search and seizure

101.
Request for search and seizure—

(1)This section applies if the ICC makes a request under any of articles 19(8), 56, 64, or 93(1)(h) of the Statute for search and seizure.

(2)The Attorney-General may give authority for the request to proceed if he or she is satisfied that—

(a)the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

(b)any thing relevant to the investigation or proceedings is or may be located in New Zealand.

(3)If the Attorney-General gives authority for the request to proceed, he or she may authorise a member of the police, in writing, to apply to a District Court Judge for a search warrant under section 102.

Cf 1992 No 86 s 43; Statute, articles 19(8), 56, 64, 93(1)(h)

102.
Issue of search warrant—

(1)This section applies if a District Court Judge, on an application in writing made on oath or affirmation by a member of the police, is satisfied that there are reasonable grounds for believing that there is in or on any place or thing—

(a)any thing on or in respect of which an international crime has been, or is suspected of having been, committed; or

(b)any thing that may be evidence as to the commission of any such crime.

(2)If this section applies, the District Court Judge may issue a warrant in respect of any thing referred to in subsection (1).

(3)A Judge must not issue a warrant under this section unless the application contains, or the applicant otherwise supplies to the Judge, such information as the Judge requires concerning the grounds on which the warrant is sought.

(4)A Judge may issue a warrant under this section subject to such conditions as the Judge thinks fit.

Cf 1995 No 27 s 48

103.
Form and content of search warrant—

A warrant issued under section 102 must—

(a)be in the prescribed form; and

(b)be directed to a member of the police by name, or to any class of members of the police specified in the warrant, or generally to every member of the police; and

(c)specify any conditions that the District Court Judge has imposed under section 102(4).

Cf 1999 No 55 s 84

104.
Powers conferred by warrant—

(1)Subject to any conditions specified in the warrant under section 103, a warrant issued under section 102 authorises the member of the police executing the warrant—

(a)to enter and search the place or thing specified in the warrant at any time by day or night during the currency of the warrant; and

(b)to use such assistants as may be reasonable in the circumstances for the purpose of the entry and search; and

(c)to use such force as is reasonable in the circumstances for the purposes of effecting entry, and for breaking open any thing in or on the place searched; and

(d)to search for and seize any thing referred to in section 102(1).

(2)A person called on to assist any member of the police executing a warrant issued under section 102 has the powers described in paragraphs (c) and (d) of subsection (1).

Cf 1999 No 55 s 85

105.
Power to stop vehicles—

If it is necessary for a member of the police to stop a vehicle for the purpose of exercising a search power conferred by a warrant issued under section 102 of this Act, sections 314B to 314D of the Crimes Act 1961 apply with any necessary modifications as if references in those sections to a statutory search power were references to section 104(1) of this Act.

Cf 1999 No 55 s 86

106.
Person executing warrant to produce evidence of authority—

Every member of the police executing any warrant issued under section 102—

(a)must have that warrant with him or her; and

(b)must produce it on initial entry and, if requested, at any subsequent time; and

(c)must, if requested at the time of the execution of the warrant or at any subsequent time, provide a copy of the warrant within 7 days after the request is made.

Cf 1999 No 55 s 87

107.
Notice of execution of warrant—

(1)Every member of the police who executes a warrant issued under section 102 must, not later than 7 days after the seizure of any thing under that warrant, give to the owner or occupier of the place or thing searched, and to every other person whom the member of the police has reason to believe may have an interest in the thing seized, a written notice specifying—

(a)the date and time of the execution of the warrant; and

(b)the identity of the person who executed the warrant; and

(c)the thing seized under the warrant.

(2)If the warrant is executed, a report on the execution of the warrant, together with a copy of any notice given under subsection (1) must be sent to the Attorney-General, without delay.

(3)If the warrant is not able to be executed, a report explaining the reasons for this must be sent to the Attorney-General, without delay.

Cf 1999 No 55 s 88

108.
Disposal of things seized—

(1)If a member of the police seizes a thing under a warrant issued under section 102, it must be delivered into the custody and control of—

(a)the Commissioner of Police; or

(b)a commissioned officer of police designated by the Commissioner to receive things seized under this Act.

(2)The Commissioner of Police or designated officer must—

(a)inform the Attorney-General, without delay, that the thing has been so delivered; and

(b)retain the thing for a period not exceeding 3 months from the day on which the thing was seized, pending the Attorney-General's direction under subsection (3) about how to deal with the thing; and

(c)comply with any direction that the Attorney-General gives.

(3)The Attorney-General may, by written notice, give the Commissioner of Police or designated officer a direction—

(a)requiring the Commissioner of Police or designated officer to send the thing to the ICC; or

(b)requiring the Commissioner of Police or designated officer to deal with the thing in some other way.

(4)The Attorney-General must direct the Commissioner of Police or designated officer to return the thing seized to the person from whose possession it was seized as soon as practicable, if—

(a)the ICC advises that the thing is not required for the Prosecutor's investigation or its proceeding; or

(b)no other direction is given by the Attorney-General before the expiry of 3 months from the day on which the thing was seized.

(5)Despite subsection (4), the Attorney-General may refuse to return the thing to the person from whom it was seized if—

(a)the thing is the subject of a dispute as to who is entitled to it; or

(b)the thing is required for the investigation of an offence within the jurisdiction of New Zealand; or

(c)possession of the thing by the person would be unlawful in New Zealand.

Cf 1995 No 27 s 55; 1999 No 55 s 89(3)

Provision of records and documents

109.
Facilitating provision of records and documents—

(1)This section applies if the ICC makes a request under article 93(1)(i) of the Statute for the provision of records and documents, including official records and documents.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

(a)the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

(b)the document or record sought is or may be in New Zealand.

(3)If the Attorney-General gives authority for the request to proceed,—

(a)the Attorney-General must forward the request to the appropriate New Zealand agency; and

(b)that agency must, without delay,—

(i)use its best endeavours to locate and make available the document or record sought; and

(ii)make such report on its endeavours as it considers to be appropriate in the circumstances; and

(iii)deliver the document or record, if located, to the Attorney-General.

(4)This section does not give any person power to require the production of a document or record.

Cf 1992 No 86 s 32(2); Statute, article 93(1)(i)

Protecting victims and witnesses and preserving evidence

110.
Protecting victims and witnesses and preserving evidence—

(1)This section applies if the ICC requests—

(a)assistance under article 93(1)(j) of the Statute in protecting victims and witnesses or preserving evidence:

(b)assistance under article 19(8), or paragraphs (2) or (3) of article 56, in preserving evidence.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

(a)the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

(b)the assistance sought is not prohibited by New Zealand law.

(3)If the Attorney-General gives authority for the request to proceed,—

(a)the Attorney-General must—

(i)take such steps as the Attorney-General thinks appropriate in the particular case; and

(ii)forward the request to the appropriate New Zealand agency; and

(b)that agency must, without delay,—

(i)use its best endeavours to give effect to the request; and

(ii)make such report on its endeavours as it considers to be appropriate in the circumstances; and

(iii)deliver the report to the Attorney-General.

Cf Statute, articles 19(8), 56(2) and (3), 68, 93(1)(j)

Identifying, freezing, or seizing property associated with international crimes

111.
Request relating to property associated with crime—

(1)This section applies if the ICC requests assistance under article 93(1)(k) of the Statute in identifying, tracing and freezing, or seizing tainted property for the purpose of eventual forfeiture.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

(a)the request relates to an international crime that is being investigated by the Prosecutor, or which is the subject of proceedings before the ICC; and

(b)tainted property is or may be located in New Zealand.

Cf Statute, articles 57(3)(e), 93(1)(k)

112.

Attorney-General may authorise measures—

(1)If the Attorney-General gives authority for the request for assistance in identifying, tracing and freezing, or seizing tainted property to proceed, the Attorney-General may authorise the appropriate New Zealand authority to apply for 1 or more of the following orders or warrants:

(a)a search warrant in respect of tainted property under section 38A of the Proceeds of Crime Act 1991:

(b)a restraining order under section 66A of the Proceeds of Crime Act 1991:

(c)a production order under section 76A of the Proceeds of Crime Act 1991:

(d)a monitoring order under section 81A of the Proceeds of Crime Act 1991.

(2)If the ICC's request relates to the freezing of tainted property, and the ICC has made an order in the nature of a restraining order, the Attorney-General may authorise the appropriate authority to register that order, and section 130 applies accordingly, with the necessary modifications.

Cf 1992 No 86 ss 59-62

Other types of assistance

113.
Request for other types of assistance—

(1)This section applies if the ICC requests any other type of assistance under article 93(1)(l) of the Statute for the purposes of facilitating the investigation and prosecution of crimes within the jurisdiction of the ICC.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that—

(a)the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

(b)the assistance sought is not prohibited by New Zealand law.

(3)If the Attorney-General gives authority for the request to proceed,—

(a)the Attorney-General must—

(i)take such steps as the Attorney-General thinks appropriate in the particular case; and

(ii)forward the request to the appropriate New Zealand agency; and

(b)that agency must, without delay,—

(i)use its best endeavours to give effect to the request; and

(ii)make such report on its endeavours as it considers to be appropriate in the circumstances; and

(iii)deliver the report to the Attorney-General.

(4)If the Attorney-General considers that the assistance sought cannot lawfully be provided, the Attorney-General must, before refusing the request, and in accordance with article 93(5) of the Statute,—

(a)consult with the ICC:

(b)consider whether the assistance can be provided subject to conditions or whether it can be provided at a later date or in an alternative manner.

Cf 1995 No 27 s 56; Statute, article 93(1)(l), (2), and (5)

Restrictions on provision of assistance

114.
Refusal of assistance—

(1)The Attorney-General must refuse a request by the ICC for assistance to which this Part applies if—

(a)the ICC does not accept the conditions or other modifications suggested in order to implement the request as contemplated by article 93(5) of the Statute and section 113(4); or

(b)the ICC determines under article 18 or article 19 of the Statute that the case to which the request relates is inadmissible and section 118(4) applies; or

(c)section 120(4) applies.

(2)The Attorney-General may refuse a request by the ICC to which this Part applies if—

(a)Part 8 (which relates to the protection of national security or third party information) applies; or

(b)there are competing requests from the ICC and a State that is not a party to the Statute relating to the same conduct and section 63(4) (as applied by section 119) applies; or

(c)there are competing requests from the ICC and a State that is not a party to the Statute relating to different conduct and section 64(3) (as applied by section 119) applies.

(3)To avoid doubt,—

(a)the only grounds on which assistance to the ICC may be refused are those specified in this section and, if applicable, section 23(2) (which relates to offences involving the administration of justice); and

(b)the restrictions on assistance specified in the Mutual Assistance in Criminal Matters Act 1992 do not apply in relation to a request by the ICC for assistance to which this Part applies.

115.
Postponement of execution of assistance—

(1)The Attorney-General may postpone the execution of a request for assistance under this Part if, and only if,—

(a)the execution of the request would interfere with an ongoing investigation or prosecution for a different offence and section 117 applies; or

(b)a ruling on admissibility is pending before the ICC and section 118 applies; or

(c)there are competing requests from the ICC and from another State to which New Zealand is under an international obligation and section 119(2)(a) applies; or

(d)the request is for assistance under article 93(1)(l) of the Statute and is one to which section 113(4) applies; or

(e)a request of the kind referred to in section 120(2)(c) is made to the ICC.

(2)Even if a case is one to which subsection (1) applies, the Attorney-General may decide not to postpone the execution of the request, and in that event the request must be dealt with in accordance with this Part.

(3)If the Attorney-General postpones the execution of a request for assistance under this Part, the postponement may be for a reasonable time and may, if the Attorney-General considers it desirable, be extended from time to time.

Cf Statute, articles 93(9), 94, 95

116.
Procedure if execution of assistance precluded under New Zealand law—

If the execution of a particular measure of assistance specified in a request to which this Part applies is prohibited in New Zealand, despite any other provision in this Part, the Attorney-General must—

(a)consider whether the assistance can be provided in another manner or subject to conditions; and

(b)promptly consult with the ICC in order to resolve the matter.

Cf Statute, article 93(3)

117.
Postponement where ongoing investigation or prosecution—

(1)If the immediate execution of a request by the ICC for assistance to which this Part applies would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the Attorney-General may postpone the execution of the request for a period of time agreed between the Attorney-General and the ICC.

(2)Despite section 115(3), the period of postponement may be no longer than is reasonably necessary to complete the investigation or prosecution.

(3)Before making a decision to postpone the execution of a request, the Attorney-General must consider whether the assistance could be provided immediately subject to certain conditions.

(4)If the Attorney-General decides to postpone the execution of a request and the ICC seeks assistance in the preservation of evidence under article 93(1)(j) of the Statute, the Attorney-General must deal with that request in accordance with this Part.

Cf Statute, article 94

118.
Postponement where admissibility challenge—

(1)This section applies if the ICC is considering an admissibility challenge under article 18 or article 19 of the Statute in respect of a case that a request to which this Part applies relates.

(2)If the ICC has not made an order under article 18 or article 19 of the Statute allowing the Prosecutor to collect evidence to which the request relates, the Attorney-General may postpone the execution of the request until the ICC's determination on admissibility is issued.

(3)If the ICC has made an order under article 18 or article 19 of the Statute allowing the Prosecutor to collect evidence to which the request relates, the Attorney-General may not postpone the execution of a request under this section but must deal with it under this Part.

(4)If the ICC determines that the case to which the request relates is inadmissible, the request must be refused.

(5)If the ICC determines that the case to which the request relates is admissible, and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

Cf Statute, article 95

119.
Competing requests—

(1)If the Attorney-General receives competing requests for assistance from the ICC and from another State to which New Zealand is under an obligation to respond, the Attorney-General must endeavour, after consultation with the ICC and the other State, to satisfy both requests.

(2)For the purposes of subsection (1), the Attorney-General may do either or both of the following:

(a)postpone the execution of either of the competing requests:

(b)attach conditions to the provision of assistance under either or both of the requests.

(3)If it is not possible to resolve the issue by consultation, the method of dealing with the competing requests must be resolved in accordance with article 90 of the Statute, and sections 61 to 65 apply with any necessary modifications.

Cf Statute, articles 90, 93(9)(a)

120.
Requests involving conflict with other international obligations—

(1)If a request by the ICC for assistance to which this Part applies concerns persons who, or information or property that, are subject to the control of another State or an international organisation under an international agreement, the Attorney-General must inform the ICC to enable it to direct its request to the other State or international organisation.

(2)Subsections (3) to (5) apply if—

(a)the ICC makes a request for assistance; and

(b)the ICC has not previously made a final determination on whether or not article 98(1) of the Statute applies to that request; and

(c)a request is made to the ICC to determine whether or not article 98(1) applies to the request for surrender.

(3)If this subsection applies, the Minister may postpone the request for assistance until the ICC advises whether or not it wishes to proceed with the request for assistance.

(4)If the ICC advises that it does not intend to proceed with the request, the request for assistance must be refused.

(5)If the ICC advises that it intends to proceed with the request for assistance, and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

Cf Statute, article 98(1)

Miscellaneous

121.
Effect of authority to proceed—

At any time before a formal response is sent to the ICC, the Attorney-General may decide that a request by the ICC for assistance to which this Part applies will be refused or the execution of the request postponed, on a ground specified in section 114 or section 115, even if the Attorney-General has previously given authority for the request to proceed.

122.
Request may relate to assistance sought by defence—

To avoid doubt, if the ICC makes a request under Part 9 of the Statute to assist a defendant in the preparation of his or her defence, that request must be dealt with in the same manner as a request for assistance of a similar type, to assist the Prosecutor.

Cf Statute, article 57(3)(b)

123.
Execution of request by Prosecutor—

(1)The Prosecutor may execute a request that does not involve any compulsory measures on New Zealand territory in the circumstances specified in article 99(4) of the Statute.

(2)If the Attorney-General identifies difficulties with the execution of a request to which article 99(4)(b) of the Statute relates, the Attorney-General must, without delay, consult with the ICC in order to resolve the matter.

(3)The provisions of this Act and the Statute, allowing a person heard or examined by the ICC under article 72 of the Statute to invoke restrictions designed to prevent disclosure of confidential information connected with national security, apply to the execution of requests for assistance under article 99 of the Statute.

Cf Statute, article 99(4) and (5)

PART 6 - ENFORCEMENT OF PENALTIES

Orders relating to victim reparation

124.
Assistance with enforcement of orders for victim reparation—

(1)This section applies if—

(a)the ICC—

(i)makes an order under article 75 of the Statute requiring reparation; and

(ii)requests that the order be enforced in accordance with article 109 of the Statute; and

(b)neither the conviction in respect of which the order was imposed nor the order requiring reparation is subject to further appeal.

(2)The Attorney-General may give authority for the request to proceed if he or she is satisfied that the order—

(a)requires reparation; and

(b)is of a kind that can be enforced in the manner provided in this section.

(3)If the Attorney-General gives authority for the request to proceed,—

(a)the Attorney-General must refer the request to the appropriate New Zealand agency; and

(b)that agency must, without delay,—

(i)in a case where the order requires a monetary payment, take such steps as are necessary to enforce the order as if it were a sentence of reparation imposed under [section 32 of the Sentencing Act 2002]; or

(ii)in a case where the order requires the restitution of assets, property or other tangible items, take such steps as are necessary to enforce the order as if it were an order for the restitution of property made under section 404(1) of the Crimes Act 1961; or

(iii)in a case where the order requires another remedy, take such steps as are necessary to enforce the order as if it were enforceable under Part 6 of the High Court Rules; and

(c)that agency must, without delay, make such report to the Attorney-General on the results of any action taken as it considers to be appropriate in the circumstances.

(4)For the purposes of this section,—

(a)[section 145 of the Sentencing Act 2002] and Part 3 of the Summary Proceedings Act 1957 (which relate, respectively, to the enforcement of a sentence of reparation and the enforcement of fines) apply with any necessary modifications to an order of the ICC for monetary payment as if it were an order of the District Court made in summary proceedings; and

(b)Part 6 of the High Court Rules apply, with any necessary modifications, to an order referred to in subsection (3)(b)(iii).

(5)Despite subsection (4), an order may not be made under Part 3 of the Summary Proceedings Act 1957—

(a)imposing a sentence for non-payment of an order of the ICC requiring monetary payment; or

(b)modifying an order of the ICC made under article 75 of the Statute, without the prior agreement of the ICC; or

(c)remitting or directing that no further steps be taken to enforce all or any part of a sum of money due under an order made by the ICC, without the prior agreement of the ICC.

(6)Nothing in this section limits or affects the provision of other types of assistance to the ICC in relation to an order made under article 75 of the Statute.

Cf Statute, articles 75(5) and (6), 109(1)

125.
Enforcement of fines—

(1)This section applies if—

(a)the ICC—

(i)orders payment of a fine under article 77(2)(a) of the Statute; and

(ii)requests that the order be enforced in accordance with article 109 of the Statute; and

(b)neither the conviction in respect of which the order was imposed nor the order for payment of a fine is subject to further appeal.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that the order—

(a)involves a monetary penalty; and

(b)is of a kind that can be enforced in the manner provided in this section.

(3)If the Attorney-General gives authority for the request to proceed,—

(a)the Attorney-General must refer the request to the appropriate New Zealand agency; and

(b)that agency must, without delay,—

(i)take such steps as are necessary to enforce the order as if it were a fine imposed on conviction . . .; and

(ii)make such report to the Attorney-General on the results of any action taken as it considers to be appropriate in the circumstances.

(4)For the purposes of this section, Part 3 of the Summary Proceedings Act 1957 (which relates to the enforcement of fines) applies, with any necessary modifications, to a fine imposed by the ICC.

(5)Despite subsection (4), an order may not be made under Part 3 of the Summary Proceedings Act 1957—

(a)imposing a sentence for non-payment of a fine imposed by the ICC; or

(b)modifying an order of the ICC for payment of a fine, without the prior agreement of the ICC; or

(c)remitting or directing that no further steps be taken to enforce all or any part of a fine payable under an order made by the ICC, without the prior agreement of the ICC.

(6)Nothing in this section limits or affects the provision of other types of assistance to the ICC in relation to a penalty imposed under article 77 of the Statute.

Cf Statute, articles 77(2)(a), 109(1)

Assistance with enforcement of forfeiture orders

126.
Request for forfeiture of tainted property—

(1)This section applies if—

(a)the ICC—

(i)makes an order under article 77(2)(b) of the Statute for the forfeiture of tainted property; and

(ii)requests assistance under article 109(1) of the Statute to enforce the forfeiture order; and

(b)neither the conviction in respect of which the order was imposed nor the forfeiture order is subject to further appeal.

(2)The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that the order is of a kind that can be enforced in the manner provided in sections 127 to 131.

(3)If the Attorney-General gives authority for the request to proceed, the Attorney-General must refer the request to the Solicitor-General for registration of the forfeiture order in the manner provided in sections 127 to 129.

Cf 1992 No 86 s 54; Statute, articles 77(2)(b), 109(1)

127.
Solicitor-General may apply for registration—

(1)The Solicitor-General may apply to the High Court for the registration of a forfeiture order or an amendment to such an order.

(2)On an application under subsection (1), the Court must register the order or the amendment to the order under section 128 if it is satisfied that the order or amendment to the order is in force.

128.
Method of registration of order—

(1)A forfeiture order, or an amendment to such an order, must be registered in the High Court by the registration in accordance with the prescribed procedure, if any, of—

(a)a copy of the order or amendment sealed by the ICC; or

(b)a copy of the order or amendment authenticated in accordance with subsection (2).

(2)A document is authenticated for the purposes of subsection (1)(b) if it purports to be—

(a)signed or certified by a Judge, the Registrar, the Deputy Registrar, or a member of the staff of the ICC; or

(b)authenticated in any other manner authorised by the Statute or the Rules.

(3)An amendment to a forfeiture order does not, for the purposes of this Act and of the Proceeds of Crime Act 1991, have any effect until it is registered.

(4)A facsimile copy of a sealed or authenticated copy of an order or an amendment of an order has the same effect, for the purposes of this Act and of the Proceeds of Crime Act 1991, as the sealed or authenticated copy that is not a facsimile.

(5)Despite subsection (4), registration effected by means of a facsimile copy ceases to have effect on the expiry of the period of 21 days commencing on the date of registration unless, before the expiry of that period, the sealed or authenticated copy is registered.

129.
Notice of registration of order—

If the High Court registers an order under section 128, the Court may direct the Solicitor-General to do either or both of the following:

(a)give notice of the registration, in the manner and within the time the Court considers appropriate, to such persons (other than a person convicted of an offence in respect of which the order was made) as the Court has reason to believe may have an interest in the property:

(b)publish notice of the registration in the manner and within the time the Court considers appropriate.

Cf 1995 No 27 s 42(4)

130.
Effect of registration of order—

(1)A forfeiture order registered under section 128 has effect and may be enforced as if it were a forfeiture order—

(a)made by the High Court under the Proceeds of Crime Act 1991; and

(b)entered on the date of registration.

(2)Subsection (1) applies subject to sections 132 and 133.

(3)If a forfeiture order is registered under section 128,—

(a)Part 2 of the Proceeds of Crime Act 1991 (other than sections 15(3), 16(4) to (6), and 17 to 23), so far as is applicable and with any necessary modifications, applies in relation to the order; and

(b)the property must be disposed of, or otherwise dealt with, in accordance with the order of, or directions given by, the ICC and the Attorney-General may give such directions as may be necessary to give effect to that order or those directions; and

(c)if, for any reason, the Attorney-General is not able to dispose of the property in accordance with the ICC's order or directions, the Attorney-General may, after consulting with the ICC, arrange for the property to be transferred to the person in whom it was vested immediately before the forfeiture order was made.

(4)A restraining order registered in accordance with section 112(2) has effect, and may be enforced, as if it were a restraining order—

(a)made by the High Court under the Proceeds of Crime Act 1991; and

(b)entered on the date of registration.

(5)Subsection (4) applies subject to section 66B of the Proceeds of Crime Act 1991.

Cf 1991 No 120 s 23A; 1992 No 86 s 57(1) and (3)

131.
Forfeiture order may be treated as pecuniary penalty order—

(1)If the Attorney-General is unable to give effect to a forfeiture order, the Attorney-General must take measures to recover—

(a)the value specified by the ICC as the value of the tainted property ordered by the ICC to be forfeited; or

(b)if the ICC has not specified the value of the tainted property, the value that, in the opinion of the Attorney-General, is the value of the tainted property ordered by the ICC to be forfeited.

(2)In a case to which subsection (1) applies, the forfeiture order is to be treated as a pecuniary penalty order for the equivalent amount and may be enforced accordingly as if it were a pecuniary penalty order—

(a)made by the High Court under the Proceeds of Crime Act 1991; and

(b)entered on the date of registration.

Cf Statute, article 109(2)

132.
Third parties may apply for relief—

(1)If a forfeiture order is registered under section 128, a person (other than a person convicted of an offence in respect of which the order was made) who claims an interest in any of the property to which the order relates may apply to the High Court for an order under section 133.

(2)A person on whom notice of the hearing of the ICC held in connection with the making of the forfeiture order was served, or who appeared at the hearing, may not make an application under subsection (1) without the leave of the High Court.

(3)The High Court must not grant leave under subsection (2) unless it is satisfied that—

(a)the applicant had good reason for failing to attend the hearing held by the ICC in connection with the making of the forfeiture order; or

(b)evidence proposed to be adduced by the applicant in connection with the application under subsection (1) was not reasonably available to the applicant at the time of the hearing of the ICC; or

(c)there are special reasons justifying the grant of leave.

(4)An application under subsection (1) must be made before the expiry of the period of 2 months beginning on the date on which the forfeiture order is registered in the High Court.

(5)Despite subsection (4), the High Court may grant a person leave to make an application under subsection (1) after the expiry of the period referred to in subsection (4) if it is satisfied that the person's failure to apply within that period was not owing to any neglect on the person's part.

(6)A person who makes an application under subsection (1) must serve notice of the application on the Solicitor-General, who must be a party to any proceedings on the application.

(7)This section and section 133 apply subject to any contrary provision in the Statute or the Rules.

Cf 1991 No 120 s 23C; 1992 No 86 s 57(1) and (3); Statute, articles 77(2)(b), 109(1)

133.
Court may grant relief to third party—

(1)This section applies if—

(a)a person applies to the High Court for an order under this section in respect of an interest in property; and

(b)the Court is satisfied that the applicant's claim is valid.

(2)If this section applies, the High Court must make an order—

(a)declaring the nature, extent, and value of the applicant's interest in the property; and

(b)either—

(i)directing that the interest be transferred to the applicant; or

(ii)declaring that payment be made to the applicant of an amount equal to the value of the interest declared by the Court.

(3)Despite subsection (2), the Court may, if it thinks fit, refuse to make an order under that subsection if it is satisfied that—

(a)the applicant was, in any respect, involved in the commission of the offence in respect of which the order was made; or

(b)although the applicant acquired the interest at the time of or after the commission of the offence, it was not acquired in good faith and for value.

Cf 1995 No 27 s 46

134.
Cancellation of registration of order—

(1)If a forfeiture order has been registered under section 128, the Attorney-General may direct the Solicitor-General to apply to the High Court for cancellation of the registration.

(2)Without limiting the generality of subsection (1), the Attorney-General may give a direction under that subsection in relation to a forfeiture order if—

(a)the order has, since its registration in New Zealand, ceased to have effect; or

(b)the order was registered in contravention of section 126; or

(c)the Attorney-General considers that cancellation is appropriate having regard to the arrangements in force with the ICC in relation to the enforcement of orders of that kind; or

(d)the ICC so requests.

(3)If, in accordance with a direction given under subsection (1), the Solicitor-General applies to the High Court for cancellation of the registration of a forfeiture order, the Court must cancel the registration accordingly.

(4)If, under the Proceeds of Crime Act 1991, a forfeiture order registered under section 128 of this Act is discharged (in whole or in part) or is revoked, that discharge or revocation constitutes a ground for an application for cancellation of the order under this section.

Cf 1995 No 27 s 47

Transfer of money or property recovered under this Part

135.
Money or property recovered to be transferred to ICC—

(1)Any money or property, including the proceeds of sale of property, recovered as a result of the enforcement under this Part of an order of the ICC must be transferred to the ICC.

(2)Subsection (1) applies—

(a)subject to section 130(3)(b) and (3)(c); but

(b)despite any other provision in this Part or in any other Act.

Cf Statute, articles 75(5), 109(3)

PART 7 - PERSONS IN TRANSIT TO ICC OR SERVING SENTENCES IMPOSED BY ICC

Person in transit

136.
Transit by person being surrendered or transferred to ICC—

(1)This section and sections 137, 138, and 150 to 156 apply to a person (the ``transferee'') who—

(a)is being surrendered to the ICC by another State under article 89 of the Statute; or

(b)is a person to whom article 93(7) of the Statute applies, and is being temporarily transferred to the ICC by another State; or

(c)is a person sentenced to imprisonment by the ICC and who is being transferred to or from the ICC, or between States, in connection with that sentence.

(2)The transferee may be transported through New Zealand for the purpose of being surrendered or transferred to the ICC or to another State, as the case may be.

(3)Before the transferee is transported through New Zealand under subsection (2), the ICC must first transmit a request for transit in accordance with article 87 of the Statute that contains the following information and documents:

(a)a description of the transferee:

(b)in the case of a person described in subsection (1)(a),—

(i)a brief statement of the facts of the case and their legal characterisation; and

(ii)a copy of the warrant for arrest and surrender:

(c)in the case of a person described in subsection (1)(b), such information as the Minister may request about the reasons for the temporary transfer.

(4)Despite subsection (3), the Minister must not refuse a request for transit unless the Minister considers that transit through New Zealand would impede or delay the surrender or transfer of the transferee.

(5)Despite subsection (3), no authorisation for transit is required if the transferee is transported by air and no landing is scheduled on New Zealand territory.

(6)If an unscheduled landing occurs on New Zealand territory, the Minister may require the ICC to submit a request for transit of the transferee under subsection (3) as soon as is reasonably practicable.

Cf 1999 No 55 s 90(1) and (2); 1992 No 86 s 42; Statute, articles 89(3), 93(1)(f) and (7)

137.
Transferee to be held in custody—

(1)The transferee must, during the period of transit, be detained in custody in accordance with subsection (2).

(2)If the aircraft or ship that transports a transferee lands or calls at any place in New Zealand,—

(a)the person holding the transferee in custody before the landing or call is made may hold the transferee in his or her custody or in police custody for a period not exceeding 96 hours; and

(b)a District Court may, on the application of a member of the police, order that the transferee be held in custody for such further period or periods as the Court considers reasonably necessary to facilitate the transportation of the transferee to the ICC or to another State, as the case may be.

(3)If an unscheduled landing occurs and the ICC is required under section 136(6) to submit a request for transit, the transferee must be held in custody under subsection (2).

(4)If subsection (3) applies, the period of detention of the transferee may not be extended beyond 96 hours from the time of the unscheduled landing, unless the request for transit from the ICC is received within that time.

(5)If a District Court orders, under subsection (2)(b), that a transferee be held in custody, the transferee may be detained in a prison or any other place in which a person could be detained under section 42.

Cf 1999 No 55 s 90(4); Statute, article 89(3)

138.
Minister must make removal order or issue certificate—

(1)If a transferee is not removed before or at the expiry of all periods of custody under section 137(2), the Minister must either—

(a)make a removal order under section 153; or

(b)issue a certificate under section 150 giving the transferee temporary authority to remain in New Zealand.

(2)Despite subsection (1), no removal order may be made under section 153 unless—

(a)the Minister first consults with the ICC; and

(b)it is not possible for the Minister and the ICC to reach agreement relating to the prompt removal of the transferee.

(3)The Minister may not issue the certificate referred to in subsection (1)(b) unless the Minister is satisfied that, because of the special circumstances of the transferee, it would be inappropriate to make a removal order.

Cf 1999 No 55 s 93(1)

Enforcement of sentences in New Zealand

139.
New Zealand may act as State of enforcement—

(1)The Minister may advise the ICC that New Zealand is willing to allow persons who are ICC prisoners as a result of being sentenced to imprisonment by the ICC to serve those sentences in New Zealand, subject to any specified conditions.

(2)If advice is given under subsection (1), the Minister may, at any time, advise the ICC—

(a)of further conditions that New Zealand wishes to impose in relation to the serving of sentences in New Zealand by ICC prisoners; or

(b)that it wishes to withdraw a condition referred to in subsection (1) or paragraph (a).

(3)Before providing advice under subsection (1) or subsection (2), the Minister must consult with—

(a)the Commissioner of Police; and

(b)the chief executive of the Department of Corrections; and

(c)the chief executive of the Department of Labour.

(4)If advice is given under subsection (1), the Minister may, at any time, advise the ICC that New Zealand is no longer willing to allow ICC prisoners to serve their sentences in New Zealand.

(5)Any advice given under subsection (4) does not affect the enforcement of sentences for which the Minister has accepted the designation of the ICC under section 140(1)(c).

Cf Statute, article 103(1) and (2)

140.
Request for sentence to be served in New Zealand—

(1)This section and sections 141 to 156 apply if—

(a)the Minister has given advice under section 139(1) and has not withdrawn that advice under section 139(4); and

(b)the ICC imposes a sentence of imprisonment on a person—

(i)convicted of an international crime; or

(ii)convicted of an offence against the administration of justice; and

(c)the ICC designates New Zealand, under article 103 of the Statute, as the State in which the sentence is to be served.

(2)If the Minister accepts the designation, the Minister must issue an order for detention in the prescribed form, and forward that order and any information about the person supplied by the ICC to each of the following persons:

(a)the Commissioner of Police:

(b)the chief executive of the Department of Corrections:

(c)the chief executive of the Department of Labour.

(3)The Minister may, at any time, ask the ICC to give 1 or more of the following assurances:

(a)that all or part of the transportation costs incurred by New Zealand in the enforcement of the sentence will be met by the ICC:

(b)that the ICC will arrange for the transportation of the ICC prisoner who is the subject of the designation,—

(i)to New Zealand, for the purpose of enabling his or her sentence to be enforced in New Zealand; or

(ii)from New Zealand, on the completion of the sentence, or if the ICC prisoner is to be transferred to another country:

(c)an assurance relating to such other matters as the Minister thinks appropriate.

141.
Prisoner to be held in custody—

(1)If the Minister accepts the designation of New Zealand as the State in which a sentence of imprisonment imposed by the ICC is to be served, the ICC prisoner may be transported to New Zealand in the custody of—

(a)a member of the police; or

(b)a prison officer; or

(c)a person authorised for the purpose by the ICC.

(2)On arrival in New Zealand or, if the person is already in New Zealand when the sentence is imposed, on the imposition of the sentence, the ICC prisoner must be detained in accordance with the Penal Institutions Act 1954 as if the prisoner had been sentenced to imprisonment under New Zealand law.

(3)Despite subsection (2) and any other enactment,—

(a)the ICC prisoner has the right to communicate on a confidential basis with the ICC, without impediment from any person:

(b)a Judge of the ICC or a member of the staff of the ICC may visit the ICC prisoner for the purpose of hearing any representations by the prisoner without the presence of any other person, except any representative of the prisoner:

(c)the ICC prisoner must not, without the prior agreement of the ICC, be—

(i)released under section 21 or section 21A of the Penal Institutions Act 1954; or

(ii)removed from a prison under section 28 of the Penal Institutions Act 1954:

(d)the Minister must advise the ICC if the ICC prisoner is transferred to a hospital under section 27 of the Penal Institutions Act 1954.

Cf Statute, articles 106, 110(1)

142.
Order for detention to act as authority for detention—

The order for detention issued by the Minister under section 140(2) is sufficient authority for the detention of the prisoner to which the notice relates for the purposes of this Part and the Penal Institutions Act 1954—

(a)until the ICC prisoner completes, or is released from, the sentence or is transferred to another country; and

(b)during any further period that the ICC prisoner is required to serve the sentence if the ICC makes an order for recall of the prisoner.

143.
Criminal Justice Act 1985 does not apply in certain cases—

(1)The administration of a sentence of imprisonment imposed by the ICC that is served in New Zealand, including any decision to release or transfer the ICC prisoner, must be undertaken in accordance with Part 10 of the Statute and the Rules.

(2)The [Parole Act 2002] does not apply to a sentence of imprisonment imposed by the ICC that is served in New Zealand unless the sentence has been imposed for an offence against the administration of justice.

(3)If, in relation to the administration of a sentence of imprisonment imposed for an offence against the administration of justice that is served in New Zealand by an ICC prisoner, there is any inconsistency between the provisions of the [Parole Act 2002] and the provisions of the Statute and the Rules, the provisions of the Statute and the Rules prevail.

Cf Statute, articles 106(1), 110(1) and (2)

144.
Transfer of prisoner to ICC for review of sentence—

(1)This section applies if the ICC, under article 110 of the Statute, decides to review the sentence of an ICC prisoner who is serving that sentence in New Zealand.

(2)The Minister must direct that the prisoner be transferred to the ICC for the purposes of enabling the ICC to review the prisoner's sentence if the Minister is satisfied that—

(a)the prisoner is entitled to appear before the ICC at the review of the prisoner's sentence; or

(b)the ICC has requested the prisoner to appear before it at the review; or

(c)the interests of justice require the prisoner's attendance at the ICC.

(3)If the Minister gives a direction under subsection (2), the Minister must forward a notice of the direction to each of the following persons:

(a)the Commissioner of Police:

(b)the chief executive of the Department of Corrections:

(c)the chief executive of the Department of Labour.

(4)On the giving of a direction under subsection (2), the prisoner may be transported to the ICC and, if necessary, from the ICC in the custody of—

(a)a member of the police; or

(b)a prison officer; or

(c)a person authorised for the purpose by the ICC.

Cf Statute, articles 105(2), 110(3) and (5)

145.
Transfer of prisoner to ICC for other purposes—

(1)This section applies if the ICC—

(a)directs that an ICC prisoner appear before it to give evidence in another case; or

(b)requests that an ICC prisoner appear before it for any other reason.

(2)The Minister,—

(a)if subsection (1)(a) applies, must direct that the ICC prisoner be transferred to the ICC:

(b)if subsection (1)(b) applies, may direct that the ICC prisoner be transferred to the ICC if the Minister is satisfied that the interests of justice require the prisoner's attendance at the ICC.

(3)If the Minister gives a direction under subsection (2), section 144(3) and (4) apply, with any necessary modifications.

(4)This section does not apply if the request by the ICC is a request to which section 95(1) applies.

146.
Transfer of prisoner to another State to complete sentence—

If an ICC prisoner of any nationality is to be transferred from New Zealand to another State to complete that sentence, the prisoner may be transported from New Zealand to that State in the custody of—

(a)a member of the police; or

(b)a prison officer; or

(c)a person authorised for the purpose by the ICC.

Cf Statute, article 104(1)

147.
Minister must make removal order or issue certificate—

(1)If an ICC prisoner is to complete his or her sentence in New Zealand or to be released at the direction of the ICC while in New Zealand and the prisoner is not a New Zealand citizen, the Minister must, before the date of completion or release, either—

(a)make a removal order under section 153; or

(b)issue a certificate under section 150 giving the prisoner temporary authority to remain in New Zealand.

(2)The Minister must not issue the certificate referred to in subsection (1)(b) unless the Minister is satisfied that,—

(a)because of the special circumstances of the ICC prisoner, it would be inappropriate to make a removal order; or

(b)it is desirable to issue a certificate under section 150 in order to facilitate the processing of a request for extradition of the ICC prisoner, or the investigation of an offence, or to enable the prisoner to serve another sentence in New Zealand, or for any other reason in the interests of justice.

(3)This section applies subject to section 148.

Cf Statute, article 107(1)

148.
Special rules in certain cases—

(1)An ICC prisoner serving a sentence in New Zealand may—

(a)be extradited to another country in accordance with the Extradition Act 1999 either—

(i)at the completion of the sentence; or

(ii)during the sentence, but only for a temporary period; or

(b)be required to remain in New Zealand in order to serve any sentence that the prisoner is liable to serve under New Zealand law; or

(c)be required to remain in New Zealand to undergo trial for an offence under New Zealand law.

(2)Despite subsection (1),—

(a)a person to whom subsection (1)(a) applies may not be extradited to another country without the prior agreement of the ICC:

(b)a person to whom subsection (1)(b) or subsection (1)(c) applies may not be required to serve a sentence in New Zealand or to undergo trial for an offence under New Zealand law, as the case may be, that relates to an act or omission that occurred before the designation referred to in section 140(1)(c), without the prior agreement of the ICC.

(3)Subsection (2) does not apply to a person who—

(a)remains voluntarily in New Zealand for more than 30 days after the date of completion of, or release from, the sentence imposed by the ICC; or

(b)voluntarily returns to New Zealand after having left it.

Cf Statute, articles 107(3), 108

149.
Extradition of escaped ICC prisoner—

(1)Subsection (2) applies if—

(a)an ICC prisoner serving a sentence in another State escapes from custody and is located in New Zealand; and

(b)the State designated by the ICC as the State of enforcement of the sentence makes a request to New Zealand for extradition in accordance with article 111 of the Statute.

(2)If this subsection applies, the Extradition Act 1999 applies to a request for extradition—

(a)with any necessary modifications; and

(b)as if the request related to a person who had been convicted of an ``extradition offence", within the meaning of section 2 of that Act.

(3)Subsection (4) applies if—

(a)an ICC prisoner serving a sentence in New Zealand escapes from custody and is located in another State; and

(b)the Minister wishes to make a request to that State for the person's extradition in accordance with article 111.

(4)If this subsection applies, the Minister may make a request for the prisoner's extradition under Part 6 of the Extradition Act 1999 and that Part applies—

(a)with any necessary modifications; and

(b)as if the request related to a person who had been convicted of an ``extradition offence", within the meaning of section 2 of that Act.

Cf Statute, article 111

Certificates and removal orders

150.
Certificate giving temporary authority to remain in New Zealand—

(1)A certificate issued by the Minister under this section—

(a)may be issued for a period, not exceeding 3 months, specified in the certificate; and

(b)may, from time to time, be renewed for 1 further period not exceeding 3 months; and

(c)may, if the Minister thinks fit, order that the person named in the certificate be taken into custody.

(2)The certificate is, while it remains in force, sufficient authority for the person named in the certificate to remain in New Zealand.

(3)If the Minister issues a certificate, the Minister may refer the person's case to the Minister of Immigration for consideration under section 35A of the Immigration Act 1987 and, in that case, that section applies for the purposes of this section as if the person were a person required to hold a permit under the Immigration Act 1987 to be in New Zealand.

(4)Except as provided in subsection (3), nothing in the Immigration Act 1987 applies to the person named in the certificate while the certificate is in force.

Cf 1999 No 55 s 94(1)-(4)

151.
Cancellation of certificate—

The Minister must cancel the certificate issued under section 150 and make a removal order under section 153 in respect of a person if,—

(a)where the Minister referred the person's case to the Minister of Immigration under section 150(3),—

(i)the Minister of Immigration declines to grant a permit under the Immigration Act 1987; and

(ii)there do not appear to the Minister to be any other grounds on which the person should be permitted to remain in New Zealand:

(b)in any other case, there do not appear to the Minister to be any other grounds on which the person should be permitted to remain in New Zealand.

Cf 1999 No 55 s 94(5)

152.
Further provisions relating to certificate—

(1)If a certificate issued under section 150 orders that a person be taken into custody, the certificate is sufficient authority for a member of the police to arrest the person and take him or her into custody.

(2)A person who is taken into custody under this section must, unless sooner released, be brought before a District Court Judge as soon as possible and, after that, every 21 days while the certificate is in

force to determine, in accordance with subsection (3), if the person should be detained in custody or released pending the decisions referred to in section 151.

(3)If a person is brought before a District Court Judge under subsection (2), the Judge may, if the Judge is satisfied that the person is the person named in the certificate,—

(a)issue a warrant for the detention of the person in custody if the Judge is satisfied that, if not detained, the person is likely to abscond; or

(b)order the release of the person subject to such conditions, if any, that the Judge thinks fit.

(4)A warrant for the detention of the person issued under subsection (3)(a) may authorise the detention of the person in a prison or any other place in which a person could be detained under section 42.

Cf 1999 No 55 s 95

153.
Removal order—

(1)A removal order made by the Minister under this section—

(a)may either—

(i)require the person who is the subject of the order to be released into or taken into the custody of a member of the police; or

(ii)if the person is not in custody, authorise any member of the police to take the person into custody; and

(b)must specify that the person is to be taken by a member of the police and placed on board any craft for the purpose of effecting the person's removal from New Zealand; and

(c)may authorise the detention in custody of the person while awaiting removal from New Zealand.

(2)The removal order must be served on the person named in the order by personal service.

(3)If the removal order authorises the detention of the person in custody, the person may be detained—

(a)in a prison, or any other place in which a person could be detained under section 42; or

(b)at a seaport or airport.

(4)A removal order made under this section continues in force until it is executed or cancelled.

(5)In this section, ``personal service'', in relation to a removal order, means personal delivery of the order to the person to whom it relates or, if the person refuses to accept the order, bringing the order to the person's attention.

Cf 1999 No 55 s 96

154.
Delay in removal—

(1)If a person is not able to be conveyed out of New Zealand within 48 hours after service of a removal order issued under section 153, the person must be brought before a District Court Judge to determine, in accordance with subsection (2), whether the person should be detained in custody or released pending removal from New Zealand.

(2)If a person is brought before a District Court Judge under subsection (1), the Judge may, if the Judge is satisfied that the person is the person named in the order,—

(a)issue a warrant for the detention of the person in custody if the Judge is satisfied that, if not detained, the person is likely to abscond; or

(b)order the release of the person subject to such conditions, if any, that the Judge thinks fit.

(3)A warrant for the detention of the person issued under subsection (2)(a) may authorise the detention of the person in any place specified in section 153(3).

155.
Immigration permit not required—

A person to whom this Part applies is not required to hold a permit under the Immigration Act 1987 if, and for so long as, he or she is in New Zealand in accordance with this Part (whether or not he or she is in custody).

156.
New Zealand citizens—

Nothing in this Part authorises the making of a removal order under section 153 in respect of a New Zealand citizen.

Cf 1999 No 55 s 97

PART 8 - PROTECTION OF NATIONAL SECURITY OR THIRD PARTY INFORMATION

National security

157.
National security issues to be dealt with under article 72—

If an issue relating to New Zealand's national security interests arises at any stage of any proceedings before the ICC, the issue must be dealt with in the manner provided in article 72 of the Statute and this Part.

Cf Statute, article 72(1) and (4)

158.
Part 9 request involving national security—

(1)If a request for assistance made under Part 9 of the Statute appears to concern the production of any documents or disclosure of evidence that would, in the opinion of the Attorney-General, prejudice New Zealand's national security interests, that request must be dealt with in accordance with the process specified in sections 161 and 162.

(2)If, having followed the specified process the matter is not able to be resolved, the Attorney-General may refuse the request or decline to authorise the production of the documents or giving of the evidence, as the case may be.

Cf Statute, articles 72(1), 93(4), 99(5)

159.
Information or evidence involving national security—

(1)This section applies if a person who has been requested to give information or evidence—

> (a)refuses to do so on the ground that disclosure would prejudice the national security interests of New Zealand; or
>
> (b)refers the matter to the Attorney-General on the ground that disclosure would prejudice the national security interests of New Zealand.

(2)If this section applies, the Attorney-General must determine whether or not he or she is of the opinion that the giving of information or evidence would prejudice New Zealand's national security interests.

(3)If the Attorney-General confirms that he or she is of the opinion that disclosure would prejudice New Zealand's national security interests, the matter must be dealt with in accordance with the process specified in sections 161 and 162.

(4)If, having following the specified process, the matter has not been resolved, the Attorney-General may refuse the request or decline to authorise the provision of the information or giving of the evidence, as the case may be.

Cf Statute, articles 72(2), 93(4)

160.
Other situations involving national security—

(1)If, in any circumstances other than those specified in sections 158 and 159, the Attorney-General is of the opinion that the disclosure of information or documents to the ICC would prejudice New Zealand's national security interests, the matter must be dealt with in accordance with the process specified in sections 161 and 162.

(2)Without limiting subsection (1), this section applies if the Attorney-General learns that information or documents are being, or are likely to be, disclosed at any stage of the proceedings, and intervenes in accordance with article 72(4) of the Statute.

(3)If, having followed the specified process, the matter has not been resolved and the ICC has not made an order for disclosure under article 72(7)(b)(i) of the Statute, the Attorney-General may refuse the request or decline to authorise the provision of the information or giving of the evidence, as the case may be.

Cf Statute, articles 72(4) and 72(7)(b)(i), 93(4)

161.
Consultation with ICC required—

The Attorney-General must consult with the ICC and, if appropriate, the defence, in accordance with article 72(5) of the Statute.

Cf Statute, article 72(5)

162.
Procedure where no resolution—

(1)If, after consultation, the Attorney-General considers that there are no means or conditions under which the information or documents or evidence could be provided or disclosed or given without prejudice to New Zealand's national security interests, the Attorney-General must notify the ICC, in accordance with article 72(6) of the Statute, of the specific reasons for his or her decision, unless a specific description of the reasons would result itself in prejudice to New Zealand's national security interests.

(2)The Attorney-General must use his or her best endeavours with a view to reaching a mutually satisfactory outcome if—

> (a)the ICC determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused; and
>
> (b)the issue of disclosure arises in the circumstances specified in section 158 or section 159 and the Attorney-General is of the opinion that New Zealand's national security interests would be prejudiced by disclosure; and
>
> (c)the ICC requests further consultations for the purpose of considering the representations, which may include hearings in camera and ex parte.

(3)The Attorney-General must comply with an ICC disclosure order if—

> (a)the ICC determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the defendant; and
>
> (b)the issue of disclosure arises in the circumstances specified in section 160(1); and
>
> (c)the ICC orders disclosure in accordance with article 72(7)(b)(i) of the Statute.

Cf Statute, articles 72(6) and (7), 93(4)

163.
Attorney-General must take into account ICC's ability to refer matter to Security Council—

In determining what action to take in relation to a matter to which this Part applies, the Attorney-General must take into account the power of the ICC to refer a matter to the Assembly of States Parties or to the Security Council in accordance with article 87(7) of the Statute if the ICC considers that a requested State is not acting in accordance with its obligations under the Statute.

Cf Statute, articles 72(7)(a)(ii), 87(7)

Information provided by third party

164.
Disclosure of information provided by third party—

(1)If the ICC requests the provision of a document or information that was provided or disclosed to New Zealand in confidence by another State, intergovernmental organisation, or international organisation, the Attorney-General must seek the consent of the originator before providing that document or information to the ICC.

(2)If the originator is a State Party that consents to disclosure of the information or document, the Attorney-General must, subject to article 72 of the Statute, provide that information or document to the ICC.

(3)If the originator is a State Party that undertakes to resolve the issue of disclosure with the ICC under article 73, the Attorney-General must inform the ICC of that undertaking.

(4)If the originator is not a State Party and refuses to consent to disclosure, the Attorney-General must inform the ICC that he or she is unable to provide the document or information because of an existing obligation of confidentiality to the originator.

Cf Statute, articles 72, 73

165.
Request for New Zealand's consent to disclosure—

(1)If a request is received from another State for New Zealand's consent to the disclosure to the ICC of a document or information that had been disclosed to the State in confidence, the Attorney-General must either—

(a)consent to the disclosure; or

(b)undertake to resolve the matter with the ICC.

(2)The provision of an undertaking under subsection (1)(b) does not prevent the Attorney-General from refusing the assistance sought in accordance with section 164(4).

Cf Statute, article 73

PART 9 - INVESTIGATIONS OR SITTINGS OF ICC IN NEW ZEALAND

166.
Prosecutor may conduct investigations in New Zealand—

The Prosecutor may conduct investigations in New Zealand territory—

(a)in accordance with the provisions of Part 9 of the Statute and as specified in section 27; or

(b)as authorised by the Pre-Trial Chamber under article 57(3)(d) of the Statute.

Cf Statute, articles 54(3), 57(3)(d), 99(1) and (4)

167.
ICC sittings in New Zealand—

The ICC may sit in New Zealand for the purpose of performing its functions under the Statute and under the Rules, including, without limitation,—

(a)taking evidence; or

(b)conducting or continuing a proceeding; or

(c)giving judgment in a proceeding; or

(d)reviewing a sentence.

Cf 1995 No 27 s 36; Statute, articles 3(3), 62

168.
ICC's powers while sitting in New Zealand—

While the ICC is sitting in New Zealand, it may exercise its functions and powers as provided under the Statute and under the Rules.

Cf 1995 No 27 s 37; Statute, articles 4(2), 64

169.
ICC may administer oaths in New Zealand—

The ICC may, at any sitting of the ICC in New Zealand, administer an oath or affirmation giving an undertaking as to truthfulness in accordance with the practice and procedure of the ICC.

Cf 1995 No 27 s 38(1); Statute, article 69(1)

170.
Orders made by ICC not subject to review—

No application for review under Part 1 of the Judicature Amendment Act 1972 and no application for an order of mandamus or prohibition or certiorari or for a declaration or injunction may be brought in respect of any judgment or order or determination of the ICC that is made or given at a sitting of the ICC in New Zealand.

Cf 1995 No 27 s 39

171.
Power to detain ICC prisoners in New Zealand prisons if ICC holds sitting in New Zealand—

(1)A person in New Zealand must be kept in custody as the Minister directs in writing if—

(a)the ICC holds any sitting in New Zealand; and

(b)the ICC requests that the person whose presence is required at the proceedings be held in custody as an ICC prisoner while the sitting continues in New Zealand.

(2)A direction given under subsection (1) in respect of an ICC prisoner is sufficient authority for the detention of that prisoner in accordance with the terms of the direction.

(3)If an ICC prisoner is directed to be detained in a prison under subsection (1), the Penal Institutions Act 1954, so far as applicable and with all necessary modifications, applies with respect to that prisoner as if the prisoner had been remanded in custody or sentenced to imprisonment for an offence against the law of New Zealand, as the case may require, and is liable to be detained in a prison under such an order or sentence.

(4)For the purposes of section 120 of the Crimes Act 1961 (which relates to escape from lawful custody) and section 121 (which relates to assisting escape), an ICC prisoner who is in custody in a New Zealand prison or other detention facility is deemed to be in lawful custody while in New Zealand.

Cf 1992 No 86 s 15(1)-(3); 1957 No 87 s 20(4); Statute, article 63

172.
Removal of ICC prisoner—

If the Minister is satisfied that the presence of an ICC prisoner who was the subject of a direction under section 171(1) is no longer necessary, sections 150 to 156 apply with any necessary modifications to that person.

PART 10 - REQUESTS TO ICC FOR ASSISTANCE

173.
Attorney-General or Minister may request assistance from ICC—

The Attorney-General or the Minister, as the case may be, may make a request to the ICC for assistance in accordance with this Part in an investigation into, or trial in respect of, conduct that may constitute a crime within the jurisdiction of the ICC or that constitutes a crime for which the maximum penalty under New Zealand law is a term of imprisonment of not less than 5 years.

Cf 1992 No 86 ss 7, 8; Statute, article 93(10)

174.
Making of request—

An urgent request for assistance may be made or transmitted to the ICC in the manner specified in section 26(1).

Cf Statute, article 96(4)

175.
Types of requests to ICC—

A request may be made under this Part for any assistance that the ICC may lawfully give including, without limitation,—

(a)the transmission of statements, documents, or other types of evidence obtained in the course of an investigation or a trial conducted by the ICC; and

(b)the questioning of any person detained by order of the ICC.

Cf Statute, article 93(10)(b)(i)

176.
Mutual Assistance in Criminal Matters Act 1992 applies to requests—

Part 2 of the Mutual Assistance in Criminal Matters Act 1992 applies, with any necessary modifications, in relation to the request for assistance of the kind specified in that Act, and any assistance provided as a result, as if the ICC were a foreign country within the meaning of that Act, subject to any contrary provision in the Statute or the Rules.

177.
Extradition Act 1999 applies to requests for surrender—

Part 6 of the Extradition Act 1999 applies, with any necessary modifications, in relation to the surrender or temporary surrender of a person by the ICC to New Zealand, as if the ICC were an extradition country within the meaning of that Act, subject to any contrary provision in the Statute or the Rules.

PART 11 - MISCELLANEOUS PROVISIONS AND CONSEQUENTIAL AMENDMENTS

Miscellaneous provisions

178.
Certificates given by Attorney-General—

(1)If the Attorney-General receives a request for assistance from the ICC to which Part 5 relates, the Attorney-General may give a certificate certifying all or any of the following facts:

(a)that a request for assistance has been made by the ICC:

(b)that the request meets the requirements of this Act:

(c)that the acceptance of the request has been duly made under and in accordance with this Act.

(2)In any proceeding under this Act, a certificate purporting to have been given under subsection (1) is, in the absence of proof to the contrary, sufficient evidence of the matters certified by the certificate.

Cf 1995 No 27 s 58

179.
Regulations—

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a)prescribing the procedure to be followed in dealing with requests made by the ICC, and providing for notification of the results of action taken in accordance with any such request:

(b)prescribing the procedures for obtaining evidence or producing documents or other articles in accordance with a request made by the ICC:

(c)providing for the payment of fees, travelling allowances, and expenses to any person in New Zealand who gives or provides evidence or assistance pursuant to a request made by the ICC:

(d)prescribing conditions for the protection of any property sent to the ICC pursuant to a request made under this Act, and making provision for the return of property in New Zealand in accordance with a request:

(e)prescribing the forms of applications, notices, certificates, warrants, and other documents for the purposes of this Act, and requiring the use of such forms:

(f)providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Cf 1995 No 27 s 60

180.
Regulations to implement Rules of Evidence and Procedure—

Without limiting section 179, the Governor-General may, by Order in Council, make regulations to implement any obligation that is placed on State Parties by the Rules of Evidence and Procedure if that obligation is not inconsistent with the provisions of this Act.

Consequential amendments to Crimes Act 1961

181.
Amendments to Crimes Act 1961—

(1)Section 68 of the Crimes Act 1961 is amended by adding the following subsection:

"(4)Nothing in this section limits or affects sections 9 to 11 of the International Crimes and International Criminal Court Act 2000."

(2)Section 69 of the Crimes Act 1961 is amended by adding the following subsection:

"(5)Nothing in this section limits or affects sections 9 to 11 of the International Crimes and International Criminal Court Act 2000."

Consequential amendment to Criminal Justice Act 1985

182.
Amendment to Criminal Justice Act 1985 (Repealed)—

Consequential amendment to Diplomatic Privileges and Immunities Act 1968

183.
Amendment to Diplomatic Privileges and Immunities Act 1968—

The Diplomatic Privileges and Immunities Act 1968 is amended by inserting, after section 10C, the following section:

"10D.Privileges and immunities of Judges, Prosecutor, and staff of International Criminal Court—

"(1)For the purposes of this section, the `ICC' means the International Criminal Court established under the Rome Statute of the International Criminal Court dated 17 July 1998; and includes any of the organs of the International Criminal Court referred to in the Statute.

"(2)The Governor-General may, by Order in Council, confer on the Judges, Prosecutor, and staff of the ICC such privileges and immunities as may be required by article 48 of the Rome Statute."

Consequential amendment to Extradition Act 1999

184.
Amendment to Extradition Act 1999—

Section 99 of the Extradition Act 1999 is amended by adding the following subsection:

"(3)Despite subsection (1), if a request for the surrender of a person is received from the International Criminal Court and from 1 or more countries, the priority of the requests must be determined by the Minister in accordance with sections 61 to 64 of the International Crimes and International Criminal Court Act 2000."

Consequential amendment to Geneva Conventions Act 1958

185.
Amendment to Geneva Conventions Act 1958—

Section 3(4) of the Geneva Conventions Act 1958 is amended by repealing paragraph (b), and substituting the following paragraph:

"(b)in any other case, imprisonment for life or a lesser term."

Consequential amendment to Penal Institutions Act 1954

186.
Amendment to Penal Institutions Act 1954—

Section 21P(2) of the Penal Institutions Act 1954 is amended by inserting, after paragraph (c), the following paragraph:

"(ca)a call between an inmate and a person acting, in his or her official capacity, on behalf of the International Criminal Court; or"

Consequential amendments to Proceeds of Crime Act 1991

187.
Amendments to Proceeds of Crime Act 1991—

(1)Section 2(1) of the Proceeds of Crime Act 1991 is amended by inserting, after the definition of interest, the following definition:

"international crime' has the same meaning as in section 4(1) of the International Crimes and International Criminal Court Act 2000."

(2)Section 38A of the Proceeds of Crime Act 1991 is amended by adding the following subsection:

"(3)This section applies with any necessary modifications if a person or body is authorised, under section 112 of the International Crimes and International Criminal Court Act 2000, to apply for a search warrant under this Act in relation to tainted property in respect of an international crime or an offence involving the administration of justice."

(3)Section 66A of the Proceeds of Crime Act 1991 is amended by adding the following subsection:

"(6)This section applies with any necessary modifications if a person or body is authorised, under section 112 of the International Crimes and International Criminal Court Act 2000, to apply for a restraining order under this Act in relation to tainted property in respect of an international crime or an offence involving the administration of justice."

"(4)Section 66B(1) of the Proceeds of Crime Act 1991 is amended by inserting, after the words ``section 56 of the Mutual Assistance Act,", the words ``or a restraining order is registered in accordance with section 112(2) of the International Crimes and International Criminal Court Act 2000,".

(5)Section 76A of the Proceeds of Crime Act 1991 is amended by adding the following subsection:

"(3)This section applies with any necessary modifications if a person or body is authorised, under section 112 of the International Crimes and International Criminal Court Act 2000, to apply for a production order under this Act in relation to tainted property in respect of an international crime or an offence involving the administration of justice."

(6)Section 81A of the Proceeds of Crime Act 1991 is amended by adding the following subsection:

"(3)This section applies with any necessary modifications if a member of the police is authorised, under section 112 of the International Crimes and International Criminal Court Act 2000, to apply for a monitoring order under this Act in relation to tainted property in respect of an international crime or an offence involving the administration of justice."