International Criminal Court Act 2001

2001 Chapter 17

CONTENTS

Part 1
THE INTERNATIONAL CRIMINAL COURT

Section

1 The ICC and the ICC Statute

Part 2
ARREST AND DELIVERY OF PERSONS
Proceedings on request

2 Request for arrest and surrender
3 Request for provisional arrest
4 Dealing with person arrested under provisional warrant
5 Proceedings for delivery order
6 Supplementary provisions as to proceedings before competent court
7 Consent to surrender

Proceedings where court refuses delivery order

8 Procedure where court refuses order
9 Appeal against refusal of delivery order: England and Wales
10 Appeal against refusal of delivery order: Scotland

Proceedings where court makes delivery order

11 Procedure where court makes order
12 Right to review of delivery order
13 Waiver of right to review

Warrants, custody, bail and related matters

14 Effect of warrant of arrest
15 Effect of delivery order
16 Bail and custody: general
17 Bail and custody (England and Wales): supplementary
18 Bail and custody: consultation with the ICC, &c
19 Discharge of person not delivered up
20 Discharge of person no longer required to be surrendered

Request for transit and unscheduled landing

21 Request for transit
22 Unscheduled landing

Supplementary provisions

23 Provisions as to state or diplomatic immunity
24 Delivery up of persons subject to criminal proceedings, &c
25 Documents having effect as warrants, &c
26 Meaning of "appropriate judicial officer" and "competent court"

Part 3
OTHER FORMS OF ASSISTANCE
Introduction

27 Provision of assistance

Forms of assistance

28 Questioning
29 Taking or production of evidence
30 Taking or production of evidence: further provisions
31 Service of process
32 Transfer of prisoner to give evidence or assist in investigation
33 Entry, search and seizure
34 Taking of fingerprints or non-intimate sample
35 Orders for exhumation
36 Provision of records and documents
37 Investigation of proceeds of ICC crime
38 Freezing orders in respect of property liable to forfeiture

National security

39 Production or disclosure prejudicial to national security

Supplementary provisions

40 Verification of material
41 Transmission of material to the ICC

Part 4
ENFORCEMENT OF SENTENCES AND ORDERS
Sentences of imprisonment

42 Detention in the United Kingdom in pursuance of ICC sentence
43 Temporary return or transfer of custody to another state
44 Transfer to another part of the United Kingdom: transfer of ICC sentence
45 Transfer to another part of the United Kingdom: transfer for temporary purposes
46 Domestic sentence current at end of term of ICC sentence
47 Custody of prisoner in transit, &c
48 Interpretation of ss. 42 to 47

Other orders

49 Power to make provision for enforcement of other orders

Part 5
OFFENCES UNDER DOMESTIC LAW
Introduction

50 Meaning of "genocide", "crime against humanity" and "war crime"

England and Wales

51 Genocide, crimes against humanity and war crimes
52 Conduct ancillary to genocide, etc. committed outside jurisdiction
53 Trial and punishment of main offences
54 Offences in relation to the ICC
55 Meaning of "ancillary offence"
56 Saving for general principles of liability, etc
57 Protection of victims and witnesses

Northern Ireland

58 Genocide, crimes against humanity and war crimes
59 Conduct ancillary to genocide, etc. committed outside jurisdiction

60 Trial and punishment of main offences
61 Offences in relation to the ICC
62 Meaning of "ancillary offence"
63 Saving for general principles of liability, etc
64 Protection of victims and witnesses

Supplementary provisions

65 Responsibility of commanders and other superiors
66 Mental element
67 Meaning of "UK national", "UK resident" and "person subject to UK service jurisdiction"
68 Proceedings against persons becoming resident within the jurisdiction
69 References to acts to include omissions, etc

Consequential provisions

70 Offences under section 1 of the Geneva Conventions Act 1957
71 Extradition: Orders in Council under the 1870 Act
72 Extradition: exception to dual criminality rule under the 1989 Act
73 Extradition: offences not regarded as of political character etc
74 Consequential amendments of armed forces legislation

Part 6
GENERAL PROVISIONS
Interpretation

75 Meaning of "national court" and "service court"
76 Meaning of "British aircraft", "British hovercraft" and "British ship"

Application and extent

77 Application of provisions in relation to other International Tribunals
78 Crown application
79 Extent
80 Power to make provision in relation to Scotland

Final provisions

81 Index of defined expressions
82 Commencement
83 Repeals
84 Short title

Schedule 1 - Supplementary provisions relating to the ICC
Schedule 2 - Delivery up of persons subject to criminal proceedings, &c.
Part 1 - Criminal proceedings
Part 2 - Extradition proceedings
Part 3 - Other delivery proceedings
Schedule 3 - Rights of persons during investigation: article 55
Schedule 4 - Taking of fingerprints or non-intimate samples
Schedule 5 - Investigation of proceeds of ICC crime
Part 1 - Production or access orders
Part 2 - Search warrants
Part 3 - Supplementary provisions
Schedule 6 - Freezing orders in respect of property liable to forfeiture
Schedule 7 - Domestic provisions not applicable to ICC prisoners
Schedule 8 - Genocide, crimes against humanity and war crimes: articles 6 to 9
Schedule 9 - Offences against the ICC: article 70
Schedule 10 - Repeals International Criminal Court Act 2001

An Act to give effect to the Statute of the International Criminal Court; to provide for offences under the law of England and Wales and Northern Ireland corresponding to offences within the jurisdiction of that Court; and for connected purposes.

[11th May 2001]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

PART 1

THE INTERNATIONAL CRIMINAL COURT

1. The ICC and the ICC Statute

(1) In this Act-

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

"the ICC Statute" means that Statute; and

"ICC crime" means a crime (other than the crime of aggression) over which the ICC has jurisdiction in accordance with the ICC Statute.

(2) References in this Act to articles are, unless otherwise indicated, to articles of the ICC Statute.

(3) Schedule 1 to this Act contains supplementary provisions relating to the ICC.

PART 2

ARREST AND DELIVERY OF PERSONS

Proceedings on request

2. Request for arrest and surrender

(1) Where the Secretary of State receives a request from the ICC for the arrest and surrender of a person alleged to have committed an ICC crime, or to have been convicted by the ICC, he shall transmit the request and the documents accompanying it to an appropriate judicial officer.

(2) If it appears to the Secretary of State that the request should be considered by an appropriate judicial officer in Scotland, he shall transmit the request and the documents accompanying it to the Scottish Ministers who shall transmit them to an appropriate judicial officer.

(3) If the request is accompanied by a warrant of arrest and the appropriate judicial officer is satisfied that the warrant appears to have been issued by the ICC, he shall endorse the warrant for execution in the United Kingdom.

(4) If in the case of a person convicted by the ICC the request is not accompanied by a warrant of arrest, but is accompanied by-

(a) a copy of the judgment of conviction,

(b) information to demonstrate that the person sought is the one referred to in the judgment of conviction, and

(c) where the person sought has been sentenced, a copy of the sentence imposed and a statement of any time already served and the time remaining to be served,

the officer shall issue a warrant for the arrest of the person to whom the request relates.

(5) In this Part a warrant endorsed or issued under this section is referred to as a "section 2 warrant".

3. Request for provisional arrest

(1) This section applies where the Secretary of State receives from the ICC a request for the provisional arrest of a person alleged to have committed an ICC crime or to have been convicted by the ICC.

(2) If it appears to the Secretary of State that application for a warrant should be made in England and Wales-

(a) he shall transmit the request to a constable and direct the constable to apply for a warrant for the arrest of that person, and

(b) on an application by a constable stating on oath that he has reason to believe-

(i) that a request has been made on grounds of urgency by the ICC for the arrest of a person, and
(ii) that the person is in, or on his way to, the United Kingdom,

an appropriate judicial officer shall issue a warrant for the arrest of that person.

(3) If it appears to the Secretary of State that application for a warrant should be made in Scotland-

(a) he shall transmit the request to the Scottish Ministers who shall instruct the procurator fiscal to apply for a warrant for the arrest of that person, and

(b) on the application by the procurator fiscal, which shall state-

(i) that a request has been made on grounds of urgency by the ICC for the arrest of a person, and

(ii) that the person is in, or on his way to, Scotland,

an appropriate judicial officer shall issue a warrant for the arrest of that person.

(4) Where an appropriate judicial officer issues a warrant under this section, he shall notify the Secretary of State and, where the proceedings are in Scotland, the Scottish Ministers that he has done so.

(5) In this Part a warrant issued under this section is referred to as a "provisional warrant".

4. Dealing with person arrested under provisional warrant.

(1) A person arrested under a provisional warrant shall be brought before a competent court as soon as is practicable.

(2) If there is produced to the court a section 2 warrant in respect of that person, the court shall proceed as if he had been arrested under that warrant.

(3) If no such warrant is produced, the court shall remand him pending the production of such a warrant.

(4) Provision shall be made by Order in Council under paragraph 3 of Schedule 1 (power to make provision to give effect to Rules of Evidence and Procedure) specifying-

(a) the period for which a person may be so remanded at any time, and

(b) the total period for which a person may be so remanded,

having regard to the time limits specified in Rules of Evidence and Procedure for the purposes of article 92.3.

(5) If at any time when the person is so remanded there is produced to the court a section 2 warrant in respect of him-

(a) the court shall terminate the period of remand, and

(b) he shall be treated as if arrested under that warrant-

(i) if he was remanded in custody, at the time the warrant was produced to the court;

(ii) if he was remanded on bail, when he surrenders to his bail.

(6) If no such warrant is produced to the court before the end of the period of the remand (including any extension of that period), the court shall discharge him.

(7) The fact that a person has been discharged under this section does not prevent his subsequent arrest under a section 2 warrant.

5. Proceedings for delivery order

(1) A person arrested under a section 2 warrant shall be brought before a competent court as soon as is practicable.

(2) If the competent court is satisfied-

(a) that the warrant-

(i) is a warrant of the ICC and has been duly endorsed under section 2(3), or

(ii) has been duly issued under section 2(4), and

(b) that the person brought before the court is the person named or described in the warrant,

it shall make a delivery order.

(3) A "delivery order" is an order that the person be delivered up-

(a) into the custody of the ICC, or

(b) if the ICC so directs in the case of a person convicted by the ICC, into the custody of the state of enforcement,

in accordance with arrangements made by the Secretary of State.

(4) In the case of a person alleged to have committed an ICC crime, the competent court may adjourn the proceedings pending the outcome of any challenge before the ICC to the admissibility of the case or to the jurisdiction of the ICC.

(5) In deciding whether to make a delivery order the court is not concerned to enquire-

(a) whether any warrant issued by the ICC was duly issued, or

(b) in the case of a person alleged to have committed an ICC crime, whether there is evidence to justify his trial for the offence he is alleged to have committed.

(6) Whether or not it makes a delivery order, the competent court may of its own motion, and shall on the application of the person arrested, determine-

(a) whether the person was lawfully arrested in pursuance of the warrant, and

(b) whether his rights have been respected.

(7) In making a determination under subsection (6) the court shall apply the principles which would be applied on an application for judicial review.

(8) If the court determines-

(a) that the person has not been lawfully arrested in pursuance of the warrant, or

(b) that the person's rights have not been respected,

it shall make a declaration or declarator to that effect, but may not grant any other relief.

(9) The court shall notify the Secretary of State (and, where the proceedings are in Scotland, the Scottish Ministers) of any declaration or declarator under subsection (8) and the Secretary of State shall transmit that notification to the ICC.

6. Supplementary provisions as to proceedings before competent court

(1) The following provisions apply in relation to proceedings before a competent court under section 5.

(2) In the case of proceedings in England and Wales-

(a) the court has the like powers, as nearly as may be, including power to adjourn the case and meanwhile to remand the person whose surrender is sought, as if the proceedings were the summary trial of an information against that person;

(b) if the court adjourns the proceedings, it shall on doing so remand the person whose surrender is sought;

(c) the proceedings are criminal proceedings for the purposes of Part 1 of the Access to Justice Act 1999 (c. 22) (advice, assistance and representation);

(d) section 16(1)(c) of the Prosecution of Offences Act 1985 (c. 23) (defence costs on dismissal of proceedings) applies, reading the reference to the dismissal of the information as a reference to the discharge of the person arrested.

(2) In the case of proceedings in Scotland-

(a) the court has the like powers, including power to adjourn the case and meanwhile to remand the person whose surrender is sought, and the proceedings shall be conducted as nearly as may be in the like manner, as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by that person;

(b) the provisions of the Legal Aid (Scotland) Act 1986 (c. 47) relating to such proceedings, or any appeal proceedings following thereon, apply to that person.

7. Consent to surrender

(1) A person arrested under this Part may consent to being delivered up into the custody of the ICC or, in the case of a person convicted by the ICC, of the state of enforcement.

This is referred to below as "consent to surrender".

(2) Consent to surrender may be given-

(a) by the person himself, or

(b) in circumstances in which it is inappropriate for the person to act for himself, by reason of his physical or mental condition or his youth, by an appropriate person acting on his behalf.

(3) Consent to surrender must-

(a) be given in writing in the prescribed form or a form to the like effect, and

(b) be signed in the presence of a justice of the peace or, in Scotland, a sheriff.

The "prescribed form" means that prescribed by rules under section 144 of the Magistrates' Courts Act 1980 (c. 43) or, in Scotland, by the High Court of Justiciary by Act of Adjournal.

(4) Where consent to surrender has been given-

(a) a competent court before which the person is brought shall forthwith make a delivery order, and

(b) he shall be taken to have waived his rights under section 12 (right to review of delivery order).

(5) Where consent to surrender has been given, notice of that fact shall be given-

(a) if the person is in custody, to the prison governor, constable or other person in whose custody he is;

(b) if the person is on bail in England and Wales, to the officer in charge of the police station at which he is required to surrender to custody.

(6) For the purposes of subsection (5)(b) notice shall be treated as given if it is sent by registered post, or recorded delivery, addressed to the officer mentioned.

Proceedings where court refuses delivery order

8. Procedure where court refuses order

(1) If a competent court refuses to make a delivery order, it shall-

(a) make an order remanding the person arrested, and

(b) notify the Secretary of State and, in the case of proceedings in Scotland, the Scottish Ministers of its decision and of the grounds for it.

(2) If the court is informed without delay that an appeal is to be brought under section 9 or 10, the order remanding the person arrested shall continue to have effect.

(3) If the court is not so informed, it shall discharge the person arrested.

9. Appeal against refusal of delivery order: England and Wales

(1) If a competent court in England and Wales refuses to make a delivery order, the Secretary of State may appeal against the decision to the High Court.

No permission is required for such an appeal, which shall be by way of re-hearing.

(2) If the High Court allows the appeal it may-

(a) make a delivery order, or

(b) remit the case to the competent court to make a delivery order in accordance with the decision of the High Court.

(3) If the High Court dismisses the appeal, the Secretary of State may, with the permission of the High Court or the House of Lords, appeal to the House of Lords.

In relation to a decision of the High Court on an appeal under this section, section 1 of the Administration of Justice Act 1960 (c. 65) (appeals to the House of Lords) applies with the omission of so much of subsection (2) of that section as restricts the grant of leave to appeal.

(4) The House of Lords may exercise any of the powers conferred on the High Court by subsection (2) above.

(5) Where a delivery order is made by the High Court or the House of Lords, the provisions of section 11(1)(a) and (c), (2) and (3) (procedure where court makes delivery order) apply in relation to that court as they apply to a competent court in England and Wales which makes a delivery order.

(6) An order for the remand of the arrested person which continues in force under section 8(2) shall cease to have effect if the High Court dismisses the appeal and the Secretary of State does not without delay-

(a) apply for permission to appeal to the House of Lords, or

(b) inform the High Court that he intends to apply for such permission.

Subject to that, any such order shall have effect so long as the case is pending. For this purpose a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to allow a step to be taken out of time) there is no step that the Secretary of State can take.

10. Appeal against refusal of delivery order: Scotland

(1) If a competent court in Scotland refuses to make a delivery order, the procurator fiscal may appeal against the decision to the High Court of Justiciary by note of appeal.

(2) If the High Court of Justiciary allows the appeal it may-

(a) make a delivery order, or

(b) remit the case to the competent court to make a delivery order in accordance with the decision of the High Court of Justiciary.

(3) Where a delivery order is made by the High Court of Justiciary, the provisions of section 11(1)(a) and (c), (2) and (3) (procedure where court makes delivery order) apply in relation to that court as they apply to a competent court in Scotland which makes a delivery order.

(4) An order for the remand of the arrested person which continues in force under section 8(2) shall cease to have effect if the High Court of Justiciary dismisses the appeal.

Subject to that, any such order shall have effect so long as the case is pending. For this purpose a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to allow a step to be taken out of time) there is no step that the procurator fiscal can take.

(5) In relation to an appeal under this section the High Court of Justiciary may make an order providing for the detention of the person to whom it relates or may grant bail.

(6) Section 177(2) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (disposal of the application for bail) applies for the purposes of such an appeal as it applies for the purposes of an appeal such as is mentioned in section 176 of that Act.

Proceedings where court makes delivery order

11. Procedure where court makes order

(1) Where a competent court makes a delivery order in respect of a person, the court shall-

(a) commit the person to custody or on bail to await the Secretary of State's directions as to the execution of the order,

(b) inform the person of his rights under section 12 (right to review of delivery order) in ordinary terms and in a language which appears to the court to be one which he fully understands and speaks, and

(c) notify the Secretary of State and, in the case of proceedings in Scotland, the Scottish Ministers of its decision.

(2) A person committed to custody under subsection (1)(a) shall be committed to prison or to the custody of a constable.

(3) A court which commits a person to custody under subsection (1)(a) may subsequently grant bail.

12. Right to review of delivery order

(1) The Secretary of State shall not give directions for the execution of a delivery order until after the end of the period of 15 days beginning with the date on which the order is made. This does not apply if the person in respect of whom the order is made-

(a) waives his rights under this section (see section 13), or

(b) is taken to have done so (see section 7(4)(b)).

(2) If before the end of that period an application for habeas corpus is made by the person in respect of whom the delivery order is made, or on his behalf, directions for the execution of the order shall not be given while proceedings on the application are still pending.

(3) Proceedings on any such application shall be treated as pending until they are discontinued or there is no further possibility of an appeal.

For this purpose any power of a court to allow an appeal out of time shall be disregarded.

(4) On an application for habeas corpus to which this section applies-

(a) the court shall set aside the delivery order and order the person's discharge if it is not satisfied of the matters mentioned in section 5(2), and

(b) the provisions of section 5(4) to (9) apply in relation to the court to which the application is made as they apply to the court that made the delivery order (but with the substitution in section 5(6) for "makes a delivery order" of "sets aside the delivery order").

(5) In the application of this section to Scotland references to an application for habeas corpus shall be read as references to the presentation of a Bill of Suspension.

13. Waiver of right to review

(1) A person in respect of whom a delivery order has been made may waive his right to review of the order.

(2) Waiver of the right to review may be made-

(a) by the person himself, or

(b) in circumstances in which it is inappropriate for the person to act for himself, by reason of his physical or mental condition or his youth, by an appropriate person acting on his behalf.

(3) Waiver of the right to review must-

(a) be made in writing in the prescribed form or a form to the like effect, and

(b) be signed in the presence of a justice of the peace or, in Scotland, a sheriff.

The "prescribed form" means that prescribed by rules under section 144 of the Magistrates' Courts Act 1980 (c. 43) or, in Scotland, by the High Court of Justiciary by Act of Adjournal.

(4) Where a person has waived his right to review of the delivery order-

(a) no such application as is mentioned in section 12 may be made, and

(b) the order shall be taken for all purposes to be validly made.

(5) Where a person has waived his right to review, notice of that fact shall be given-

(a) if the person is in custody, to the prison governor, constable or other person in whose custody he is;

(b) if the person is on bail in England and Wales, to the officer in charge of the police station at which he is required to surrender to custody.

(6) For the purposes of subsection (5)(b) notice shall be treated as given if it is sent by registered post, or recorded delivery, addressed to the officer mentioned.

Warrants, custody, bail and related matters

14. Effect of warrant of arrest

(1) For the purposes of any enactment or rule of law relating to warrants of arrest-

(a) a section 2 warrant endorsed or issued in any part of the United Kingdom, or

(b) a provisional warrant issued in any part of the United Kingdom,

shall be treated as if it were a warrant for the arrest of a person for an offence committed in that part of the United Kingdom.

(2) Any such warrant may be executed in any part of the United Kingdom, and may be so executed by any person to whom it is directed or by any constable.

(3) A person arrested under any such warrant shall be deemed to continue in legal custody until, in accordance with this Part, he is brought before a competent court.

15. Effect of delivery order

(1) A delivery order is sufficient authority for any person acting in accordance with the directions of the Secretary of State to receive the person to whom the order relates, keep him in custody and convey him to the place where he is to be delivered up into the custody of the ICC (or, as the case may be, of the state of enforcement) in accordance with arrangements made by the Secretary of State.

(2) A person in respect of whom a delivery order is in force is deemed to be in legal custody at any time when, being-

(a) in the United Kingdom, or

(b) on board a British ship, a British aircraft or a British hovercraft,

he is being taken under the order to or from any place or is being kept in custody pending his delivery up under the order.

(3) A person authorised for the purposes of a delivery order to take the person to whom the order relates to or from any place or, to keep him in custody, has all the powers, authority, protection and privileges-

(a) if he is in the United Kingdom, of a constable in that part of the United Kingdom, or

(b) if he is outside the United Kingdom, of a constable in the part of the United Kingdom to or from which the other person is to be taken.

(4) If a person in respect of whom a delivery order is in force escapes or is unlawfully at large, he may be arrested without warrant by a constable and taken to any place where or to which, by virtue of this Part, he is required to be or to be taken.

(5) For the purposes of subsection (4) a "constable" means-

(a) a person who is a constable in any part of the United Kingdom, and

(b) in relation to any place, a person who, at that place, has, under any enactment (including subsection (3)), the powers of a constable in any part of the United Kingdom.

16. Bail and custody: general

(1) Where under this Part a court has power to remand a person, the court may-

(a) remand him in custody, that is, commit him for the period of the remand to prison or to the custody of a constable, or

(b) if an application for bail is made to the court, remand him on bail, that is, direct him to surrender himself into the custody of the officer in charge of a specified police station at the time appointed for him to do so.

(2) The provisions of the Bail Act 1976 (c. 63) apply to proceedings under this Part in England and Wales as to proceedings against a fugitive offender.

(3) The time appointed under subsection (1)(b) for a person to surrender to custody-

(a) shall be a time appointed by the officer in charge of the specified police station and notified in writing to the person remanded, and

(b) shall not be more than 24 hours before the time at which it appears to that officer that the period of remand is likely to end.

(4) Where under this Part a court in Scotland has power to remand a person and the person makes an application to the court for bail, the court may admit him to bail and shall have the like powers in doing so as it has in proceedings in respect of an offence alleged to have been committed by him.

(5) Nothing in this Part shall be taken as authorising a court to grant bail to a person who is serving a sentence of imprisonment or detention to which he has been sentenced by a national court, or who is in custody awaiting trial or sentence by a national court.

17. Bail and custody (England and Wales): supplementary

(1) The following provisions apply where a person is granted bail under this Part by a competent court in England and Wales.

(2) Where a court-

(a) grants bail but is unable to release the person because no surety or suitable surety is available, and

(b) fixes the amount in which the surety is to be bound with a view to the recognizance of the surety being entered into subsequently,

the court shall in the meantime commit the person to the custody of a constable.

(3) During the period between the surrender of a person to custody and the end of the period of remand he shall be treated as committed to the custody of the constable to whom he surrenders.

(4) Where it appears to that officer that the end of the period of remand will be unexpectedly delayed, he shall grant the person bail subject to a duty to surrender himself into the custody of the officer in charge of the specified police station at the time appointed for him to do so.

The time appointed under this subsection for the person to surrender to custody-

(a) shall be a time to be appointed by the officer in charge of the specified police station and notified in writing to the person remanded, and

(b) shall not be more than 24 hours before the time at which it appears to that officer that the period of remand is likely to end.

(5) If a person required to surrender to custody in accordance with subsection (4) fails to do so-

(a) the court by which he was remanded may issue a warrant for his arrest,

(b) provisions of section 14 (effect of warrant of arrest) apply in relation to the warrant, and

(c) on his arrest the person shall be brought before the court which shall reconsider the question of bail.

(6) In this section "the specified police station" means the police station specified by the competent court under section 16(1)(b).

18. Bail and custody: consultation with the ICC, & c

(1) Where an application for bail is made in proceedings under this Part in England and Wales-

(a) the court shall notify the Secretary of State of the application,

(b) the Secretary of State shall consult with the ICC, and

(c) bail shall not be granted without full consideration of any recommendations made by the ICC.

(2) Where an application for bail is made in proceedings under this Part in Scotland-

(a) the court shall notify the Scottish Ministers of the application,

(b) the Scottish Ministers shall notify the Secretary of State who shall consult with the ICC and shall notify the Scottish Ministers of any recommendations made by the ICC, and

(c) bail shall not be granted without full consideration of any such recommendations.

(3) In considering any such application as is mentioned in subsection (1) or (2) the court shall consider-

(a) whether, given the gravity of the offence or offences he is alleged to have committed or, as the case may be, of which he has been convicted by the ICC, there are urgent and exceptional circumstances justifying release on bail, and

(b) whether any necessary measures have been or will be taken to secure that the person will surrender to custody in accordance with the terms of his bail.

19. Discharge of person not delivered up

(1) If the person in respect of whom a delivery order has been made is not delivered up under the order within 40 days after it was made, an application may be made, by him or on his behalf, for his discharge.

(2) The application shall be made-

(a) in the case of an order made in England and Wales, to the High Court;

(b) in the case of an order made in Scotland, to the High Court of Justiciary.

(3) On an application under this section the court shall order the person's discharge unless reasonable cause is shown for the delay.

20. Discharge of person no longer required to be surrendered

(1) Where the ICC informs the Secretary of State that a person arrested under this Part is no longer required to be surrendered-

(a) the Secretary of State shall notify an appropriate judicial officer of that fact, and

(b) that officer shall, on receipt of the notification, make an order for his discharge.

(2) Where the person was arrested in Scotland, the Secretary of State shall inform the Scottish Ministers who shall notify an appropriate judicial officer.

Request for transit and unscheduled landing

21. Request for transit

(1) This section applies where the Secretary of State receives a request from the ICC for transit of a person being surrendered by another state.

(2) If the Secretary of State accedes to the request-

(a) the request shall be treated for the purposes of this Part as if it were a request for that person's arrest and surrender,

(b) the warrant accompanying the request shall be deemed to have been endorsed under section 2(3), and

(c) the person to whom the request relates shall be treated on arrival in the United Kingdom as if he had been arrested under that warrant.

(3) In relation to a case where this section applies-

(a) the reference in section 5(2)(a)(i) to the warrant having been duly endorsed under section 2(3) shall be read as a reference to the Secretary of State having acceded to the request for transit; and

(b) section 12(1) (right to review of delivery order: period for making application) shall have effect as if the reference to 15 days (the period during which

directions to execute delivery order are not to be given) were a reference to two days.

(4) A person in transit under this section shall not be granted bail.

22. Unscheduled landing

(1) If a person being surrendered by another state makes an unscheduled landing in the United Kingdom, he may be arrested by any constable and shall be brought before a competent court as soon as is practicable.

(2) The court shall remand him in custody pending-

(a) receipt by the Secretary of State of a request from the ICC for his transit, and

(b) the Secretary of State's decision whether to accede to the request.

(3) If no such request is received by the Secretary of State before the end of the period of 96 hours beginning with the time of the arrested person's unscheduled landing-

(a) the Secretary of State shall forthwith notify the court of that fact, and

(b) the court shall, on receipt of the notification, discharge the arrested person.

(4) If the Secretary of State receives such a request before the end of that period, he shall notify the court without delay of his decision whether to accede to the request.

(5) If the Secretary of State notifies the court that he has decided to accede to the request-

(a) the court shall, on receipt of the notification, terminate the period of remand, and

(b) the provisions of section 21 (request for transit) apply with the substitution for the reference in subsection (2)(c) to the time of arrival in the United Kingdom of a reference to the time of notification to the court.

(6) If the Secretary of State notifies the court that he has decided not to accede to the request, the court shall, on receipt of the notification, discharge the arrested person.

(7) In the applications of subsections (3) to (6) to proceedings in Scotland, any duty of the Secretary of State to notify the court shall be read as a duty to notify the Scottish Ministers who shall forthwith notify the court accordingly.

Supplementary provisions

23. Provisions as to state or diplomatic immunity

(1) Any state or diplomatic immunity attaching to a person by reason of a connection with a state party to the ICC Statute does not prevent proceedings under this Part in relation to that person.

(2) Where-

(a) state or diplomatic immunity attaches to a person by reason of a connection with a state other than a state party to the ICC Statute, and

(b) waiver of that immunity is obtained by the ICC in relation to a request for that person's surrender,

the waiver shall be treated as extending to proceedings under this Part in connection with that request.

(3) A certificate by the Secretary of State-

(a) that a state is or is not a party to the ICC Statute, or

(b) that there has been such a waiver as is mentioned in subsection (2),

is conclusive evidence of that fact for the purposes of this Part.

(4) The Secretary of State may in any particular case, after consultation with the ICC and the state concerned, direct that proceedings (or further proceedings) under this Part which, but for subsection (1) or (2), would be prevented by state or diplomatic immunity attaching to a person shall not be taken against that person.

(5) The power conferred by section 1 of the United Nations Act 1946 (c. 45) (power to give effect by Order in Council to measures not involving the use of armed force) includes power to make in relation to any proceedings such provision corresponding to the provision made by this section in relation to the proceedings, but with the omission-

(a) in subsection (1), of the words "by reason of a connection with a state party to the ICC Statute", and

(b) of subsections (2) and (3),

as appears to Her Majesty to be necessary or expedient in consequence of such a referral as is mentioned in article 13(b) (referral by the United Nations Security Council).

(6) In this section "state or diplomatic immunity" means any privilege or immunity attaching to a person, by reason of the status of that person or another as head of state, or as representative, official or agent of a state, under-

(a) the Diplomatic Privileges Act 1964 (c. 81), the Consular Relations Act 1968 (c.18), the International Organisations Act 1968 (c.48) or the State Immunity Act 1978 (c.33),

(b) any other legislative provision made for the purpose of implementing an international obligation, or

(c) any rule of law derived from customary international law.

24. Delivery up of persons subject to criminal proceedings, &c

Schedule 2 makes provision for cases where the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person-

(a) against whom criminal proceedings are pending or in progress before a national court, or who has been dealt with in such proceedings,

(b) against whom extradition proceedings are pending or in progress in the United Kingdom, or in respect of whom a warrant or order has been made in such proceedings, or

(c) against whom proceedings are pending or in progress in the United Kingdom for a delivery order under-

(i) the United Nations (International Tribunal) (Former Yugoslavia) Order 1996 (S.I. 1996/716) , or

(ii) the United Nations (International Tribunal) (Rwanda) Order 1996 (S.I. 1996/1296),or against whom a delivery order has been made in such proceedings.

25. Documents having effect as warrants, &c

(1) For the purposes of this Part the copy of a warrant issued by the ICC that is transmitted to the Secretary of State shall be treated as if it were the original warrant.

(2) Where facsimile transmission is used-

(a) for the making of a request by the ICC or the transmission of any supporting documents, or

(b) for the transmission of any document in consequence of such a request,

this Part applies as if the documents so sent were the originals of the documents so transmitted.

Any such document shall be receivable or, in Scotland, admissible in evidence accordingly.

(3) Where the ICC amends a warrant of arrest, the provisions of this Part apply to the amended warrant as if it were a new warrant.

This does not affect the validity of anything done in reliance on the old warrant.

26. Meaning of "appropriate judicial officer" and "competent court"

For the purposes of this Part-

"appropriate judicial officer" means-

(a) the Senior District Judge (Chief Magistrate),

(b) a District Judge (Magistrates' Courts) designated for the purposes of this Act by the Lord Chancellor, or

(c) the Sheriff of Lothian and Borders; and

"competent court" means a court consisting of an appropriate judicial officer.

PART 3

OTHER FORMS OF ASSISTANCE

Introduction

27. Provision of assistance

(1) The powers conferred by this Part on the Secretary of State are exercisable for the purpose of providing assistance to the ICC in relation to investigations or prosecutions where-

(a) an investigation has been initiated by the ICC, and

(b) the investigation and any proceedings arising out of it have not been concluded.

(2) Where facsimile transmission is used-

(a) for the making of a request by the ICC or the transmission of any supporting documents, or

(b) for the transmission of any document in consequence of such a request,

this Part applies as if the documents so sent were the originals of the documents so transmitted.

Any such document shall be receivable in evidence accordingly.

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

Forms of assistance

28. Questioning

(1) This section applies where the Secretary of State receives a request from the ICC for assistance in questioning a person being investigated or prosecuted.

(2) The person concerned shall not be questioned in pursuance of the request unless-

(a) he has been informed of his rights under article 55, and

(b) he consents to be interviewed.

(3) The provisions of article 55 are set out in Schedule 3 to this Act.

(4) Consent for the purposes of subsection (2)(b) may be given-

(a) by the person himself, or

(b) in circumstances in which it is inappropriate for the person to act for himself, by reason of his physical or mental condition or his youth, by an appropriate person acting on his behalf.

(5) Such consent may be given orally or in writing, but if given orally it shall be recorded in writing as soon as is reasonably practicable.

29. Taking or production of evidence

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

For this purpose "evidence" includes documents and other articles.

(2) The Secretary of State may nominate a court in England and Wales or Northern Ireland to receive the evidence to which the request relates.

(3) For this purpose the nominated court-

(a) has the same powers with respect to securing the attendance of witnesses and the production of documents or other articles as it has for the purpose of other proceedings before the court; and

(b) may take evidence on oath.

(4) A person shall not be compelled to give evidence or produce anything in proceedings under this section that he could not be compelled to give or produce in criminal proceedings in the part of the United Kingdom in which the nominated court has jurisdiction.

(5) If in order to comply with the request it is necessary for the evidence received by the court to be verified in any manner, the notice nominating the court shall specify the nature of the verification required.

(6) No order for costs shall be made in proceedings under this section.

30. Taking or production of evidence: further provisions

(1) The following provisions apply in relation to proceedings before a nominated court under section 29 and the evidence received in the proceedings.

(2) The court may, if it thinks it necessary in order to protect-

(a) victims and witnesses, or a person alleged to have committed an ICC crime, or

(b) confidential or sensitive information,

direct that the public be excluded from the court.

(3) The court shall ensure that a register is kept of the proceedings that indicates, in particular-

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

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

(c) whether any of those persons was denied the opportunity of cross-examining a witness as to any part of his testimony.

(4) The register shall not be open to inspection except as authorised by the Secretary of State or with the leave of the court.

(5) A copy of the register of the proceedings shall be sent to the Secretary of State for transmission to the ICC.

31. Service of process

(1) This section applies where the Secretary of State receives from the ICC a summons or other document together with a request for it to be served on a person in England, Wales or Northern Ireland.

(2) The Secretary of State may direct the chief officer of police for the area in which the person appears to be to cause the document to be personally served on him.

(3) If the document is so served, the chief officer of police shall forthwith inform the Secretary of State when and how it was served.

(4) If it does not prove possible to serve the document, the chief officer of police shall forthwith inform the Secretary of State of that fact and of the reason.

(5) In the application of this section to Northern Ireland the reference to the chief officer of police shall be read as a reference to the Chief Constable of the Royal Ulster Constabulary.

32. Transfer of prisoner to give evidence or assist in investigation

(1) This section applies where the Secretary of State receives a request from the ICC for the temporary transfer of a prisoner to the ICC for purposes of identification or for obtaining testimony or other assistance.

(2) Where the prisoner is detained in Scotland, the Secretary of State shall transmit the request to the Scottish Ministers.

(3) The relevant Minister may issue a warrant (a "transfer warrant") requiring the prisoner to be delivered up, in accordance with arrangements made by the relevant Minister with the ICC, into the custody of the ICC.

(4) A transfer warrant shall not be issued unless the prisoner consents to the transfer, but consent may not be withdrawn after the issue of the warrant.

(5) The following provisions of Part 2 of this Act apply in relation to a transfer warrant under this section as they apply in relation to a delivery order under that Part-

section 15 (effect of delivery order), and

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

(6) In this section "prisoner" means-

(a) a person serving a sentence in a prison to which the Prison Act 1952 (c. 52) or the Prison Act (Northern Ireland) 1953 (c.18(N.I.)) applies,

(b) a person serving a sentence in a prison, or in a young offenders institution, to which the Prisons (Scotland) Act 1989 (c. 45) applies,

(c) a person serving a sentence of detention or imprisonment imposed by a service court,

(d) a person detained in custody otherwise than in pursuance of a sentence, including in particular-

(i) a person in custody awaiting trial or sentence,

(ii) a person committed to prison for contempt or for default in paying a fine,

(iii) a person in custody in connection with proceedings to which Part 2 or 3 of Schedule 2 applies (extradition or other delivery proceedings),

(iv) a person detained under any provision of the Immigration Act 1971 (c. 77).

(7) For the purposes of the Immigration Acts (within the meaning of the Immigration and Asylum Act 1999 (c. 33)) a person detained under any provision of the Immigration Act 1971 is not to be regarded as having left the United Kingdom at any time when a transfer warrant is in force in respect of him (including any time when he is in the custody of the ICC).

(8) In this section, "the relevant Minister" means-

(a) in relation to a person detained in England and Wales or Northern Ireland, the Secretary of State;

(b) in relation to a person detained in Scotland, the Scottish Ministers.

33. Entry, search and seizure

(1) This section applies where the Secretary of State receives from the ICC a request for assistance which appears to him to require the exercise of any of the powers conferred by Part 2 of the Police and Criminal Evidence Act 1984 (c. 60) or, in Northern Ireland, Part III of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (powers of entry, search and seizure).

(2) The Secretary of State may direct a constable to apply for a warrant or order under the relevant Part, which shall apply in relation to an ICC crime as it applies to a serious arrestable offence.

34. Taking of fingerprints or non-intimate sample

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

(2) In subsection (1) and that Schedule "fingerprints" and "non-intimate sample" have the meaning given by section 65 of the Police and Criminal Evidence Act 1984 or, in Northern Ireland, Article 53 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

35. Orders for exhumation

Proceedings before the ICC in respect of an ICC crime are criminal proceedings for the purposes of section 23 of the Coroners Act 1988 (c. 13) or section 11 of the Coroners Act (Northern Ireland) 1959 (c.15(N.I.)) (power of coroner to order exhumation).

36. Provision of records and documents

(1) This section applies where the Secretary of State receives a request from the ICC for the provision of records and documents relating to-

(a) the evidence given in any proceedings in England and Wales or Northern Ireland in respect of conduct that would constitute an ICC crime, or

(b) the results of any investigation of such conduct with a view to such proceedings.

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

37. Investigation of proceeds of ICC crime

(1) Where the Secretary of State receives a request from the ICC for assistance-

(a) in ascertaining whether a person has benefited from an ICC crime, or

(b) in identifying the extent or whereabouts of property derived directly or indirectly from an ICC crime,

the Secretary of State may direct a constable to apply for an order or warrant under Schedule 5.

(2) In that Schedule-

Part 1 makes provision for production or access orders,

Part 2 makes provision for the issuing of search warrants, and

Part 3 contains supplementary provisions.

38. Freezing orders in respect of property liable to forfeiture

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

(a) authorise a person to act on behalf of the ICC for the purposes of applying for a freezing order, and

(b) direct that person to apply for such an order under Schedule 6.

National security

39. Production or disclosure prejudicial to national security

(1) Nothing in any of the provisions of this Part, or any corresponding provision of an Act of the Scottish Parliament, requires or authorises the production of documents, or the disclosure of information, which would be prejudicial to the security of the United Kingdom.

(2) For the purposes of any such provision a certificate signed by or on behalf of the Secretary of State to the effect that it would be prejudicial to the security of the United Kingdom for specified documents to be produced, or for specified information to be disclosed, is conclusive evidence of that fact.

Supplementary provisions

40. Verification of material

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

41. Transmission of material to the ICC

(1) Any evidence or other material obtained under this Part by a person other than the Secretary of State, together with any requisite verification, shall be sent to the Secretary of State for transmission to the ICC.

(2) Where any evidence or other material is to be transmitted to the ICC, there shall be transmitted-

(a) where the material consists of a document, the original or a copy, and

(b) where the material consists of any other article, the article itself or a photograph or other description of it,

as may be necessary to comply with the request of the ICC.

PART 4

ENFORCEMENT OF SENTENCES AND ORDERS

Sentences of imprisonment

42. Detention in the United Kingdom in pursuance of ICC sentence

(1) This section applies where-

(a) the United Kingdom is designated by the ICC as the state in which a person ("the prisoner") is to serve a sentence of imprisonment imposed by the ICC, and

(b) the Secretary of State informs the ICC that the designation is accepted.

(2) Where the Secretary of State is minded that the prisoner should be detained in Scotland-

(a) he shall consult the Scottish Ministers, and

(b) if the Scottish Ministers agree that the prisoner should be detained in Scotland, they shall issue a warrant authorising the bringing of the prisoner to Scotland.

(3) Where subsection (2) does not apply or the Scottish Ministers do not agree, the Secretary of State shall issue a warrant authorising-

(a) the bringing of the prisoner to England and Wales or Northern Ireland,

(b) the detention of the prisoner there in accordance with the sentence of the ICC, and

(c) the taking of the prisoner to a specified place where he is to be detained.

The provisions of the warrant may be varied by the Secretary of State, and shall be so varied to give effect to any variation of the ICC's sentence.

(4) A prisoner subject to a warrant authorising his detention in England and Wales or Northern Ireland shall be treated for all purposes, subject to subsection (5) and Schedule 7, as if he were subject to a sentence of imprisonment imposed in exercise of its criminal jurisdiction by a court in the part of the United Kingdom in which he is to be detained.

(5) The following enactments do not apply to a person detained in pursuance of a sentence of the ICC-

(a) the Repatriation of Prisoners Act 1984 (c. 47),

(b) Schedule 1 to the Crime (Sentences) Act 1997 (c. 43) (transfer of prisoners within the British Islands).

As to transfer of such a person within the United Kingdom, see sections 44 and 45 below.

(6) Schedule 7 excludes the operation of certain statutory provisions in relation to a person detained in England and Wales or Northern Ireland in pursuance of a sentence of the ICC.

43. Temporary return or transfer of custody to another state

(1) This section applies where the Secretary of State receives a request from the ICC-

(a) for the temporary return of the prisoner to the custody of the ICC for the purposes of any proceedings, or

(b) for the transfer of the prisoner to the custody of another state in pursuance of a change in designation of state of enforcement.

(2) If the prisoner is detained in Scotland, the Secretary of State shall transmit the request to the Scottish Ministers.

(3) The relevant Minister shall-

(a) issue a warrant authorising the prisoner's temporary return or transfer in accordance with the request,

(b) make the necessary arrangements with the ICC or, as the case may be, the other state, and

(c) give such directions as to the custody, surrender and (where appropriate) return of the prisoner as appear to him appropriate to give effect to the arrangements.

(4) Where the prisoner is temporarily returned to the custody of the ICC, the warrant authorising his detention in any part of the United Kingdom shall continue to have effect so as to apply to him again on his return.

(5) In this section "the relevant Minister" means-

(a) in relation to a person detained in England and Wales or Northern Ireland, the Secretary of State, and

(b) in relation to a person detained in Scotland, the Scottish Ministers.

44. Transfer to another part of the United Kingdom: transfer of ICC sentence

(1) The relevant Minister may make an order for the transfer of the prisoner to another part of the United Kingdom to serve the whole or part of the remainder of the ICC sentence there.

(2) No such order shall be made-

(a) for the transfer of the prisoner to Scotland without the agreement of the Scottish Ministers, or

(b) for the transfer of the prisoner from Scotland without the agreement of the Secretary of State.

(3) An order under this section shall be subject to such conditions (if any) as the relevant Minister may impose from time to time.

(4) If an order is made under this section the warrant authorising the prisoner's detention in the part of the United Kingdom from which he is transferred-

(a) shall continue to have effect, and

(b) shall have effect as if it were a warrant authorising his detention in the part of the United Kingdom to which he is transferred.

(5) A prisoner transferred under this section to England and Wales or Northern Ireland shall be treated for all purposes, subject as mentioned in section 42(4), as if he were serving a sentence of imprisonment imposed in exercise of its criminal jurisdiction by a court in the part of the United Kingdom to which he is transferred.

(6) In this section "the relevant Minister" means-

(a) in relation to a person detained in England and Wales or Northern Ireland, the Secretary of State, and

(b) in relation to a person detained in Scotland, the Scottish Ministers.

45. Transfer to another part of the United Kingdom: transfer for temporary purposes

(1) This section applies where it appears to the relevant Minister-

(a) that the prisoner should be transferred to another part of the United Kingdom for the purpose of attending criminal proceedings against him there, or

(b) that the attendance of the prisoner at a place in another part of the United Kingdom is desirable in the interests of justice, or for the purposes of any public inquiry.

(2) The relevant Minister may make an order for the transfer of the prisoner to that part of the United Kingdom.

(3) No such order shall be made-

(a) For the transfer of the prisoner to Scotland without the agreement of the Scottish Ministers, or

(b) for the transfer of the prisoner from Scotland without the agreement of the Secretary of State.

(4) An order under this section shall be subject to such conditions (if any) as the relevant Minister thinks fit to impose.

Any such conditions may be varied or removed at any time.

(5) Where an order is made under this section-

(a) the warrant authorising the prisoner's detention in the part of the United Kingdom from which he is transferred shall continue to have effect, and

(b) he shall be returned to that part of the United Kingdom when the purposes for which the order is made are fulfilled.

(6) In this section "the relevant Minister" means-

(a) in relation to a person detained in England and Wales or Northern Ireland, the Secretary of State, and

(b) in relation to a person detained in Scotland, the Scottish Ministers.

46. Domestic sentence current at end of term of ICC sentence

(1) Where a person who completes a term of imprisonment imposed by the ICC-

(a) is still subject to a domestic sentence of imprisonment, whether imposed before or during his imprisonment in pursuance of the sentence of the ICC, and

(b) has been transferred to another part of the United Kingdom under section 44 or 45, he shall be treated as if he had been transferred from the part of the United Kingdom in which the domestic sentence was imposed, by order under Schedule 1 to the Crime (Sentences) Act 1997 (c. 43), on a restricted transfer subject to such conditions as the relevant Minister may consider appropriate.

(2) In subsection (1)-

(a) a "domestic sentence" means a sentence imposed by a court in the United Kingdom, and

(b) "the relevant Minister" means-

(i) where the domestic sentence was imposed in England and Wales or Northern Ireland, the Secretary of State, and

(ii) where the domestic sentence was imposed in Scotland, the Scottish Ministers.

47. Custody of prisoner in transit, &c

(1) The following provisions of this section apply in relation to times when the prisoner is subject to a warrant under any provision of this Part, or any corresponding provision of an Act of the Scottish Parliament, but is not in legal custody under the Prison Act 1952 (c. 52), the Prisons (Scotland) Act 1989 (c. 45) or the Prison Act (Northern Ireland) 1953 (c.18(N.I.)).

(2) The prisoner shall be deemed to be in the legal custody of the relevant Minister at any time when, being-

(a) in the United Kingdom, or

(b) on board a British ship, a British aircraft or a British hovercraft,

he is being taken to or from any place or is being kept in custody.

(3) The relevant Minister may, from time to time, designate a person as a person who is for the time being authorised to take the prisoner to or from any place or to keep the prisoner in custody.

(4) A person so authorised has all the powers, authority, protection and privileges-

(a) of a constable in the part of the United Kingdom in which that person is for the time being, or

(b) if he is outside the United Kingdom, of a constable in the part of the United Kingdom to or from which the prisoner is to be taken.

(5) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a constable and taken to any place to which he may be taken under the warrant referred to in subsection (1).

In this subsection "constable", in relation to any part of the United Kingdom, means-

(a) a person who is a constable in that or any other part of the United Kingdom, or

(b) a person who, at the place in question, has under any enactment (including subsection (4)) the powers of a constable in that or any other part of the United Kingdom.

(6) In this section "the relevant Minister" means-

(a) in relation to a person who is, or is to be, detained in England and Wales or Northern Ireland, the Secretary of State, and

(b) in relation to a person who is, or is to be, detained in Scotland, the Scottish Ministers.

48. Interpretation of ss. 42 to 47

(1) Any reference in sections 42 to 47 to a person being detained in a part of the United Kingdom is to his being subject to a warrant authorising his detention there.

(2) References to such a warrant include, unless the context otherwise requires, a warrant issued under an Act of the Scottish Parliament authorising his detention in Scotland.

Other orders

49. Power to make provision for enforcement of other orders

(1) The Secretary of State may make provision by regulations for the enforcement in England and Wales or Northern Ireland of-

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

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

(2) The regulations may authorise the Secretary of State-

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

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

(3) The regulations shall provide for the registration of the order by a court in England and Wales or Northern Ireland as a precondition of enforcement.

An order shall not be so registered unless the court is satisfied that the order is in force and not subject to appeal. If the order has been partly complied with, the court shall register the order for enforcement only so far as it has not been complied with.

(4) The regulations may provide that-

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

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

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

as if the order were an order of a court in England and Wales or Northern Ireland.

The regulations may for that purpose apply all or any of the provisions (including provisions of subordinate legislation) relating to the enforcement in England and Wales or Northern Ireland of orders of a court of a country or territory outside the United Kingdom.

(5) A court shall not exercise its powers of enforcement under the regulations in relation to any property unless it is satisfied-

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

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

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

(7) Regulations under this section-

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

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

PART 5

OFFENCES UNDER DOMESTIC LAW

Introduction

50. Meaning of "genocide", "crime against humanity" and "war crime"

(1) In this Part-

"genocide" means an act of genocide as defined in article 6,

"crime against humanity" means a crime against humanity as defined in article 7, and

"war crime" means a war crime as defined in article 8.2.

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

(a) any relevant Elements of Crimes adopted in accordance with article 9, and

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

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

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

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

Her Majesty may by Order in Council-

(a) certify that such a reservation or declaration has been made and the terms in which it was made;

(b) if any such reservation or declaration is withdrawn (in whole or part), certify that fact and revoke or amend any Order in Council containing the terms of that reservation or declaration.

(5) In interpreting and applying the provisions of the articles referred to in subsection (1) the court shall take into account any relevant judgment or decision of the ICC.

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

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

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

England and Wales

51. Genocide, crimes against humanity and war crimes

(1) It is an offence against the law of England and Wales for a person to commit genocide, a crime against humanity or a war crime.

(2) This section applies to acts committed-

(a) in England or Wales, or

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

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

(1) It is an offence against the law of England and Wales for a person to engage in conduct ancillary to an act to which this section applies.

(2) This section applies to an act that if committed in England or Wales would constitute-

(a) an offence under section 51 (genocide, crime against humanity or war crime), or

(b) an offence under this section,

but which, being committed (or intended to be committed) outside England and Wales, does not constitute such an offence.

(3) The reference in subsection (1) to conduct ancillary to such an act is to conduct that would constitute an ancillary offence in relation to that act if the act were committed in England or Wales.

(4) This section applies where the conduct in question consists of or includes an act committed-

(a) in England or Wales, or

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

53. Trial and punishment of main offences

(1) The following provisions apply in relation to-

(a) offences under section 51 (genocide, crimes against humanity and war crimes),

(b) offences under section 52 (conduct ancillary to genocide, etc. committed outside jurisdiction), and

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

(2) The offence is triable only on indictment.

(3) Proceedings for an offence shall not be instituted except by or with the consent of the Attorney General.

(4) If the offence is not committed in England or Wales-

(a) proceedings may be taken, and

(b) the offence may for incidental purposes be treated as having been committed, in any place in England or Wales.

(5) A person convicted of-

(a) an offence involving murder, or

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

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

In this subsection "murder" means the killing of a person in such circumstances as would, if committed in England or Wales, constitute murder.

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

54. Offences in relation to the ICC

(1) A person intentionally committing any of the acts mentioned in article 70.1 (offences against the administration of justice in relation to the ICC) may be dealt with as for the corresponding domestic offence committed in relation to a superior court in England and Wales.

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

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

(3) The corresponding domestic offences are-

(a) in relation to article 70.1(a) (giving false testimony when under an obligation to tell the truth), an offence against section 1(1) of the Perjury Act 1911 (c. 6);

(b) in relation to article 70.1(c) (interference with witness or evidence), an offence against section 51 of the Criminal Justice and Public Order Act 1994 (c. 33) or at common law;

(c) in relation to article 70.1(b) or (d) to (f) (other offences), an offence at common law.

(4) This section and, so far as may be necessary for the purposes of this section, the enactments and rules of law relating to the corresponding domestic offences apply to acts committed-

(a) in England or Wales, or

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

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

(6) If an offence under this section, or an offence ancillary to such an offence, is not committed in England or Wales-

(a) proceedings may be taken, and

(b) the offence may for incidental purposes be treated as having been committed,

in any place in England or Wales.

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

55. Meaning of "ancillary offence"

(1) References in this Part to an ancillary offence under the law of England and Wales are to-

(a) aiding, abetting, counselling or procuring the commission of an offence,

(b) inciting a person to commit an offence,

(c) attempting or conspiring to commit an offence, or

(d) assisting an offender or concealing the commission of an offence.

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

(3) In subsection (1)(b) the reference to incitement is to conduct amounting to an offence of incitement at common law.

(4) In subsection (1)(c)-

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

(b) the reference to conspiracy is to conduct amounting to an offence of conspiracy under section 1 of the Criminal Law Act 1977 (c. 45).

(5) In subsection (1)(d)-

(a) the reference to assisting an offender is to conduct that in relation to an arrestable offence would amount to an offence under section 4(1) of the Criminal Law Act 1967 (c. 58); and

(b) the reference to concealing an offence is to conduct that in relation to an arrestable offence would amount to an offence under section 5(1) of that Act.

56. Saving for general principles of liability, etc

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

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

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

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

57. Protection of victims and witnesses

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

(a) as if any reference in those provisions to a specific substantive offence included an offence under section 51 involving conduct constituting that offence; and

(b) as if any reference in those provisions to a specific ancillary offence included-

(i) that ancillary offence in relation to an offence under section 51 involving conduct constituting the substantive offence in question, and

(ii) an offence under section 52 involving conduct constituting that ancillary offence in relation to an act to which that section applies involving conduct constituting the substantive offence in question.

(2) The enactments are-

the Sexual Offences (Amendment) Act 1976 (c. 82) and the Sexual Offences (Amendment) Act 1992 (c.34) (protection of victims of sexual offences);

Chapters 1 to 3 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (protection of witnesses and complainants); and

the Sexual Offences (Protected Material) Act 1997 (c. 39) (restrictions on access by defendants and others to material disclosed in connection with proceedings for offences).

(3) In subsection (1) above-

(a) "substantive offence" means an offence other than an ancillary offence; and

(b) the reference to conduct constituting an offence is to conduct that would constitute that offence if committed in England and Wales.

Northern Ireland

58. Genocide, crimes against humanity and war crimes

(1) It is an offence against the law of Northern Ireland for a person to commit genocide, a crime against humanity or a war crime.

(2) This section applies to acts committed-

(a) in Northern Ireland, or

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

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

(1) It is an offence against the law of Northern Ireland for a person to engage in conduct ancillary to an act to which this section applies.

(2) This section applies to an act that if committed in Northern Ireland would constitute-

(a) an offence under section 58 (genocide, crime against humanity or war crime), or

(b) an offence under this section,

but which, being committed (or intended to be committed) outside Northern Ireland, does not constitute such an offence.

(3) The reference in subsection (1) to conduct ancillary to such an act is to conduct that would constitute an ancillary offence in relation to that act if the act were committed in Northern Ireland.

(4) This section applies where the conduct in question consists of or includes an act committed-

(a) in Northern Ireland, or

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

60. Trial and punishment of main offences

(1) The following provisions apply in relation to-

(a) offences under section 58 (genocide, crimes against humanity and war crimes),

(b) offences under section 59 (conduct ancillary to genocide, etc. committed outside jurisdiction), and

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

(2) The offence is triable only on indictment.

(3) Proceedings for an offence shall not be instituted except by or with the consent of the Attorney General for Northern Ireland.

(4) If the offence is not committed in Northern Ireland-

(a) proceedings may be taken, and

(b) the offence may for incidental purposes be treated as having been committed,

in any place in Northern Ireland.

(5) A person convicted of-

(a) an offence involving murder, or

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

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

In this subsection "murder" means the killing of a person in such circumstances as would, if committed in Northern Ireland, constitute murder.

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

61. Offences in relation to the ICC

(1) A person intentionally committing any of the acts mentioned in article 70.1 (offences against the administration of justice in relation to the ICC) may be dealt with as for the corresponding domestic offence committed in relation to a superior court in Northern Ireland.

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

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

(3) The corresponding domestic offences are-

(a) in relation to article 70.1(a) (giving false testimony when under an obligation to tell the truth), an offence against Article 3(1) of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) ;

(b) in relation to article 70.1(b) to (f) (other offences), an offence at common law.

(4) This section and, so far as may be necessary for the purposes of this section, the enactments and rules of law relating to the corresponding domestic offences apply to acts committed-

(a) in Northern Ireland, or

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

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

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

(a) proceedings may be taken, and

(b) the offence may for incidental purposes be treated as having been committed,

in any place in Northern Ireland.

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

62. Meaning of "ancillary offence"

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

(a) aiding, abetting, counselling or procuring the commission of an offence,

(b) inciting a person to commit an offence,

(c) attempting or conspiring to commit an offence, or

(d) assisting an offender or concealing the commission of an offence.

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

(3) In subsection (1)(b) the reference to incitement is to conduct amounting to an offence of incitement at common law.

(4) In subsection (1)(c)-

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

(b) the reference to conspiracy is to conduct amounting to an offence of conspiracy under Article 9 of that Order.

(5) In subsection (1)(d)-

(a) the reference to assisting an offender is to conduct that in relation to an arrestable offence would amount to an offence under section 4(1) of the Criminal Law Act (Northern Ireland) 1967 (c. 18 (N.I.)); and

(b) the reference to concealing an offence is to conduct that in relation to an arrestable offence would amount to an offence under section 5(1) of that Act.

63. Saving for general principles of liability, etc

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

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

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

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

64. Protection of victims and witnesses

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

(a) as if any reference in those provisions to a specific substantive offence included an offence under section 58 involving conduct constituting that offence; and

(b) as if any reference in those provisions to a specific ancillary offence included-

(i) that ancillary offence in relation to an offence under section 58 involving conduct constituting the substantive offence in question, and

(ii) an offence under section 59 involving conduct constituting that ancillary offence in relation to an act to which that section applies involving conduct constituting the substantive offence in question.

(2) The enactments are-

the Sexual Offences (Northern Ireland) Order 1978 (S.I. 1978/460 (N.I. 15)) and the Sexual Offences (Amendment) Act 1992 (c. 34) (protection of victims of sexual offences); and Parts 1 to 4 of the Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789 (N.I. 8)) (protection of witnesses and complainants).

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

(3) In subsection (1) above-

(a) "substantive offence" means an offence other than an ancillary offence; and

(b) the reference to conduct constituting an offence is to conduct that would constitute that offence if committed in Northern Ireland.

Supplementary provisions

65. Responsibility of commanders and other superiors

(1) This section applies in relation to-

(a) offences under this Part, and

(b) offences ancillary to such offences.

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

(a) he either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences, and

(b) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

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

(a) he either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offences,

(b) the offences concerned activities that were within his effective responsibility and control, and

(c) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(4) A person responsible under this section for an offence is regarded as aiding, abetting, counselling or procuring the commission of the offence.

(5) In interpreting and applying the provisions of this section (which corresponds to article 28) the court shall take into account any relevant judgment or decision of the ICC. Account may also be taken of any other relevant international jurisprudence.

(6) Nothing in this section shall be read as restricting or excluding-

(a) any liability of the commander or superior apart from this section, or

(b) the liability of persons other than the commander or superior.

66. Mental element

(1) References in this Part to a person committing-

(a) genocide,

(b) a crime against humanity,

(c) a war crime, or

(d) any of the acts mentioned in article 70.1 (offences against the admninistration of justice in relation to the ICC),

shall be construed in accordance with this section.

(2) Unless otherwise provided by-

(a) the articles mentioned in the definition in section 50(1) of the crimes specified in subsection (1)(a) to (c) above, or any relevant Elements of Crimes (see section 50(2)),

(b) section 54(1) or 61(1) or article 70.1 (offences in relation to the ICC), or

(c) section 65 (responsibility of commanders and other superiors),

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

(3) For this purpose-

(a) a person has intent-

(i) in relation to conduct, where he means to engage in the conduct, and

(ii) in relation to a consequence, where he means to cause the consequence or is aware that it will occur in the ordinary course of events; and

(b) "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

(4) In interpreting and applying the provisions of this section (which corresponds to article 30) the court shall take into account any relevant judgment or decision of the ICC.

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

67. Meaning of "UK national", "UK resident" and "person subject to UK service jurisdiction"

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

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

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

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

(2) In this Part a "United Kingdom resident" means a person who is resident in the United Kingdom

.

(3) In this Part a "person subject to UK service jurisdiction" means-

(a) a person subject to military law, air force law or the Naval Discipline Act 1957 (c. 53);

(b) any such person as is mentioned in section 208A or 209(1) or (2) of the Army Act 1955 (c. 18) or the Air Force Act 1955 (c. 19) (application of Act to passengers in HM ships and aircraft and to certain civilians); or

(c) any such person as is mentioned in section 117 or 118 of the Naval Discipline Act 1957 (application of Act to passengers in HM ships and to certain civilians).

68. Proceedings against persons becoming resident within the jurisdiction

(1) This section applies in relation to a person who commits acts outside the United Kingdom at a time when he is not a United Kingdom national, a United Kingdom resident or a person subject to UK service jurisdiction and who subsequently becomes resident in the United Kingdom.

(2) Proceedings may be brought against such a person in England and Wales or Northern Ireland for a substantive offence under this Part if-

(a) he is resident in the United Kingdom at the time the proceedings are brought, and

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

(3) Proceedings may be brought against such a person in England and Wales or Northern Ireland for an offence ancillary to a substantive offence under this Part (or what would be such a substantive offence if committed in that part of the United Kingdom) if-

(a) he is resident in the United Kingdom at the time the proceedings are brought, and

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

(4) In this section a "substantive offence" means an offence other than an ancillary offence.
(5) Nothing in this section shall be read as restricting the operation of any other provision of this Part.

69. References to acts to include omissions, etc

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

Consequential provisions

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

(1) In section 1 of the Geneva Conventions Act 1957 (c. 52) (punishment of grave breaches of the conventions)-

(a) in subsection (1), omit the words from "and on conviction on indictment" to the end; and

(b) omit subsections (3) to (5).

(2) After that section insert-

"1A Trial and punishment of offences under s.1

(1) The following provisions apply in relation to offences under section 1 of this Act.

(2) The offence is triable only on indictment.

(3) Proceedings for an offence shall not be instituted-

(a) in England and Wales, except by or with the consent of the Attorney General;

(b) in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland.

(4) If the offence is not committed in the United Kingdom-

(a) proceedings may be taken, and

(b) the offence may for incidental purposes be treated as having been committed,

in any place in the United Kingdom.

(5) A person convicted of an offence involving murder shall be dealt with as for an offence of murder.

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

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

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

71. Extradition: Orders in Council under the 1870 Act

(1) This section applies in relation to extradition under Schedule 1 to the Extradition Act 1989 (c. 33) (extradition where an Order in Council under section 2 of the Extradition Act 1870 (c.52) is in force in relation to the foreign state).

(2) The offences to which such an Order in Council can apply include any Part 5 offence.

(3) "Part 5 offence" means-

(a) an offence under section 51 or 58 (genocide, crimes against humanity and war crimes),

(b) an offence under section 52 or 59 (conduct ancillary to genocide etc. committed outside the jurisdiction), or

(c) an ancillary offence in relation to any such offence.

(4) For the purposes of Schedule 1 to the 1989 Act, conduct, wherever committed, which constitutes-

(a) a Part 5 offence, and

(b) an offence against the law of any state in relation to which that Schedule has effect, shall be deemed to be an offence committed within the jurisdiction of that state.

(5) If any conduct would constitute a Part 5 offence if committed in the United Kingdom then, notwithstanding that it does not constitute such an offence-

(a) a person whose surrender is sought in respect of that conduct may be surrendered by the United Kingdom in pursuance of an Order in Council to which subsection (2) applies, and

(b) subsection (4) applies to the conduct as if it constituted a Part 5 offence.

(6) References in this section to an offence under any provision of this Part, or to an offence ancillary to such an offence, include any corresponding offence under the law of Scotland.

72. Extradition: exception to dual criminality rule under the 1989 Act

(1) Section 2 of the Extradition Act 1989 (meaning of "extradition crime") is amended as follows.

(2) In subsection (1)(b) (extra-territorial offences), after sub-paragraph (ii) add- ", or (iii) the condition specified in subsection (3A) below.".

(3) After subsection (3) insert-

"(3A) The condition mentioned in subsection (1)(b)(iii) above is that the conduct constituting the offence constitutes or, if committed in the United Kingdom would constitute-

(a) an offence under section 51 or 58 of the International Criminal Court Act 2001 (genocide, crimes against humanity and war crimes),

(b) an offence under section 52 or 59 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction), or

(c) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to any such offence.".

(4) After subsection (4) add-

"(5) References in this section to an offence under any provision of the International Criminal Court Act 2001, or to an offence ancillary to such an offence, include any corresponding offence under the law of Scotland.".

73. Extradition: offences not regarded as of political character etc

(1) For section 23 of the Extradition Act 1989 (c. 33) (genocide, etc.) substitute-

"23 Genocide, crimes against humanity and war crimes

(1) This section applies to-

(a) any offence that if committed in the United Kingdom would be punishable as-

(i) an offence under section 51 or 58 of the International Criminal Court Act 2001 (genocide, crimes against humanity and war crimes),

(ii) an offence under section 52 or 59 of that Act (conduct ancillary to genocide, etc. committed outside the jurisdiction), or

(iii) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to any such offence as is mentioned in sub-paragraph (i) or (ii); and

(b) any offence punishable in the United Kingdom under section 1 of the Geneva Conventions Act 1957 (grave breach of scheduled conventions).

(2) For the purposes of this Act-

(a) an offence to which this section applies shall not be regarded as an offence of a political character, and

(b) no proceedings in respect of such an offence shall be regarded as a criminal matter of a political character.

(3) It is not an objection to proceedings against a person in respect of an offence to which this section applies that under the law in force at the time when and in the place where he is alleged to have committed the act of which he is accused, or of which he was convicted, he could not have been punished for it.

(4) References in this section to an offence under any provision of the International Criminal Court Act 2001, or to an offence ancillary to such an offence, include any corresponding offence under the law of Scotland.".

(2) In the Backing of Warrants (Republic of Ireland) Act 1965 (c. 45), after section 6C insert-

"6D Genocide, crimes against humanity and war crimes

(1) This section applies to-

(a) any offence that if committed in the United Kingdom would be punishable as-

(i) an offence under section 51 or 58 of the International Criminal Court Act 2001 (genocide, crimes against humanity and war crimes),

(ii) an offence under section 52 or 59 of that Act (conduct ancillary to genocide, etc. committed outside the jurisdiction), or

(iii) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to any such offence as is mentioned in sub-paragraph (i) or (ii); and

(b) any offence punishable in the United Kingdom under section 1 of the Geneva Conventions Act 1957 (grave breach of scheduled conventions).

(2) For the purposes of this Act-

(a) an offence to which this section applies shall not be regarded as an offence of a political character, and

(b) no proceedings in respect of such an offence shall be regarded as a criminal matter of a political character.

(3) It is not an objection to proceedings against a person in respect of an offence to which this section applies that under the law in force at the time when and in the place where he is alleged to have committed the act of which he is accused, or of which he was convicted, he could not have been punished for it.

(4) References in this section to an offence under any provision of the International Criminal Court Act 2001, or to an offence ancillary to such an offence, include any corresponding offence under the law of Scotland.".

74. Consequential amendments of armed forces legislation

(1) In section 70(3) of the Army Act 1955 (3 & 4 Eliz. 2 c. 18), section 70(3) of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) and section 42(1)(b) of the Naval Discipline Act 1957 (c. 53) (sentence on conviction by court-martial of offence where corresponding civil offence is murder), after "murder" insert ", or an offence for which a person convicted by a civil court is to be dealt with as for an offence of murder,".

(2) In section 70(4) of the Army Act 1955 (3 & 4 Eliz. 2 c. 18), section 70(4) of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) and section 48(2) of the Naval Discipline Act 1957 (c. 53) (civil offences not triable by court-martial if committed in the United Kingdom)-

(a) after "rape" insert "or an offence under section 1 of the Geneva Conventions Act 1957"; and

(b) after "the Nuclear Explosions (Prohibition and Inspections) Act 1998" insert "or an offence under section 51 or 52 of the International Criminal Court Act 2001".

(3) In section 70(5) of the Army Act 1955, section 70(5) of the Air Force Act 1955 and section 48(2) of the Naval Discipline Act 1957 (where offences involving killing are taken to have been committed), after "or manslaughter" insert ", or an offence under section 1 of the Geneva Conventions Act 1957 or section 51 of the International Criminal Court Act 2001 consisting of the killing of a person,".

PART 6

GENERAL PROVISIONS

Interpretation

75. Meaning of "national court" and "service court"

In this Act-

"national court" means a court in the United Kingdom or a service court; and

"service court" means-

(a) a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957,

(b) a disciplinary court constituted under section 52G of the Naval Discipline Act 1957,

(c) a Standing Civilian Court, or

(d) the Courts-Martial Appeal Court.

76. Meaning of "British aircraft", "British hovercraft" and "British ship"

(1) In this Act-

"British aircraft" means a British-controlled aircraft within the meaning of section 92 of the Civil Aviation Act 1982 (c. 16) (application of criminal law to aircraft), or one of Her Majesty's aircraft;

"British hovercraft" means a British-controlled hovercraft within the meaning of that section as applied in relation to hovercraft by virtue of provision made under the Hovercraft Act 1968 (c .59), or one of Her Majesty's hovercraft; and

"British ship" means a British ship within the meaning of the Merchant Shipping Act 1995 (c. 21), or one of Her Majesty's ships.

(2) References in subsection (1) to Her Majesty's aircraft, hovercraft or ships are to the aircraft, hovercraft or, as the case may be, ships which belong to, or are exclusively employed in the service of, Her Majesty in right of the government of the United Kingdom.

Application and extent

77. Application of provisions in relation to other International Tribunals

(1) Section 23 (provisions as to state or diplomatic immunity) applies in relation to proceedings under-

(a) the United Nations (International Tribunal) (Former Yugoslavia) Order 1996 (S.I. 1996/716), or

(b) the United Nations (International Tribunal) (Rwanda) Order 1996 (S.I. 1996/1296), as it applies in relation to proceedings under Part 2 of this Act, with the following adaptations.

(2) The adaptations are-

(a) in subsection (1) omit the words "by reason of a connection with a state party to the ICC Statute";

(b) omit subsections (2), (3) and (5);

(c) in subsection (4)-

(i) for the reference to the ICC substitute a reference to the relevant International Tribunal, and

(ii) omit the words "or (2)".

(3) The provisions of sections 42 to 48 (enforcement of sentences of imprisonment) apply, with any necessary modifications, in relation to a sentence of imprisonment imposed by either of the International Tribunals to which the Orders mentioned in subsection (1) above apply as they apply in relation to a sentence of the ICC.

(4) The power conferred by section 1 of the United Nations Act 1946 (c. 45) (power to give effect by Order in Council to measures not involving the use of armed force) includes power to make in relation to any other tribunal of a similar character that may be established by resolution of the Security Council of the United Nations provision corresponding to that made in relation to the ICC by the provisions of this Act mentioned in subsection (1) or (3) above.

78. Crown application

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

79. Extent

(1) The following provisions of this Act do not extend to Scotland-

(a) Part 3 (other forms of assistance), except section 32 (transfer of prisoner to give evidence or assist in investigation) and section 39 (production or disclosure prejudicial to national security);

(b) section 49 (power to make provision for enforcement of orders other than sentences of imprisonment);

(c) Part 5 (offences under domestic law), except-

section 50(3) (regulations setting out Elements of Crimes),

section 50(4) (Orders in Council specifying relevant reservations or declarations),

section 70 (offences under section 1 of the Geneva Conventions Act 1957 (c. 52)),

and

sections 71 to 73 (extradition);

(d) the repeal by Schedule 10 of the provisions of the Genocide Act 1969 (c. 12) creating the offence of genocide.

(2) This Act extends to Northern Ireland.

(3) Her Majesty may by Order in Council make provision for extending the provisions of this Act, with such exceptions, adaptations or modifications as may be specified in the Order, to any of the Channel Islands, the Isle of Man or any colony.

(4) Section 77 of this Act (application of provisions to other International Tribunals) has the same extent as section 1 of the United Nations Act 1946 (c. 45).

(5) The provisions of this Act amending the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53), or which relate to proceedings under those Acts, extend to any place to which those Acts extend.

80. Power to make provision in relation to Scotland

(1) The Secretary of State may by regulations make such modifications or adaptations of this Act as appear to him appropriate for co-ordinating the provisions of this Act and any corresponding provisions of an Act of the Scottish Parliament.

(2) The regulations may, in particular, make provision-

(a) for the transmission to and from Scottish Ministers of communications from and to the ICC, and

(b) for warrants, orders and other things done under the Scottish provisions to have effect in England and Wales or Northern Ireland as if done under the corresponding provisions of this Act.

(3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Final provisions

81. Index of defined expressions

In this Act the expressions listed below are defined or otherwise explained by the provisions indicated-

act and conduct (in Part 5)	section 69
ancillary offence (in Part 5)	
- in England and Wales	section 55
- in Northern Ireland	section 62
Appropriate judicial officer (in Part 2)	section 26
Article	section 1(2)
British aircraft, British hovercraft and British ship	section 76
Competent court (in Part 2)	section 26
crime against humanity (in Part 5)	section 50(1)
delivery order (in Part 2)	section 5(3)
detained (in sections 42 to 47)	section 48(1)
genocide (in Part 5)	section 50(1)

the ICC	section 1(1)
ICC crime	section 1(1)
the ICC Statute	section 1(1)
national court	section 75
person subject to UK service jurisdiction (in Part 5)	section 67(3)
the prisoner (in Part 4)	section 42(1)
provisional warrant (in Part 2)	section 3(5)
remand (in Part 2)	section 16
section 2 warrant (in Part 2)	section 2(5)
service court	section 75
United Kingdom national (in Part 5)	section 67(1)
United Kingdom resident (in Part 5)	section 67(2)
war crime (in Part 5)	section 50(1)

82. Commencement

(1) The provisions of this Act come into force on such day as the Secretary of State may by order appoint.

(2) Any such order shall be made by statutory instrument and may appoint different days for different provisions and purposes.

83 Repeals

The enactments mentioned in Schedule 10 are repealed to the extent specified.

84 Short title

This Act may be cited as the International Criminal Court Act 2001.

S C H E D U L E S

SCHEDULE 1

SUPPLEMENTARY PROVISIONS RELATING TO THE ICC

Legal capacity, privileges and immunities

1

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

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

(a) the ICC,

(b) the judges, the Prosecutor, the Deputy Prosecutors and the Registrar,

(c) the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry, and

(d) counsel, experts, witnesses and other persons involved in proceedings of the ICC,

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

Power to provide for sittings of the ICC in the UK

2

(1) Her Majesty may by Order in Council make such provision as appears to Her Majesty to be necessary or expedient to enable sittings of the ICC to be held in the United Kingdom.

(2) Provision may in particular be made with respect to the detention of persons in the custody of the ICC.

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

3 Her Majesty may by Order in Council make such provision as appears to Her Majesty to be necessary or expedient for giving effect to-

(a) any Rules of Procedure and Evidence having effect under article 51, and

(b) any related agreement to which the United Kingdom, or Her Majesty's government in the United Kingdom, is a party.

Parliamentary approval of draft Orders

4 No recommendation shall be made to Her Majesty to make an Order in Council under paragraph 1, 2 or 3 unless a draft-

(a) has been laid before Parliament and approved by a resolution of each House of Parliament, and

(b) has been laid before, and approved by resolution of, the Scottish Parliament.

Proof of orders, etc. of the ICC

5

(2) An order, judgment, warrant or request of the ICC which purports-

(a) to bear the seal of the ICC, or

(b) to be signed by a person in his capacity as a judge or officer of the ICC,

shall, for the purposes of this Act, be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person.

(3) A document, duly authenticated, which purports to be a copy of an order, judgment, warrant or request of the ICC shall, for the purposes of this Act, be deemed without further proof to be a true copy.

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

Evidence about ICC proceedings and orders

6

(1) For the purposes of this Act a certificate purporting to be issued by or on behalf of the ICC stating-

(a) that an investigation has been initiated by the Court, or that proceedings before the Court have been instituted and have not been concluded,

(b) that an order of the Court is in force and is not subject to appeal,

(c) that property recoverable under a forfeiture order made by the Court remains unrecovered, or

(d) that any person has been notified of any proceedings in accordance with the ICC Statute,

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

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

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

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

Pension provision for UK judges of ICC

7

(1) The appropriate Minister may by order make provision for securing that a holder of a United Kingdom judicial office who serves as a judge of the ICC is not worse off as regards pension benefits than if he had not been appointed to the ICC.

(2) The order may-

(a) entitle an ICC judge who was, immediately before his appointment as an ICC judge, a member of a judicial pension scheme to remain as a member of that scheme, or

(b) authorise the making of such other arrangements as appear to the Minister to be appropriate.

(3) An order making such provision as is mentioned in sub-paragraph (2)(a) may include such provision as the appropriate Minister considers is necessary to secure-

(a) that the terms on which an ICC judge remains a member of a judicial pension scheme are those which would have been applicable had he not been appointed as an ICC judge, and

(b) that entitlement to benefits payable in accordance with the scheme continues to be determined as if, while serving as an ICC judge, his salary was that which would (but for section 68(3)(a) of the Access to Justice Act 1999 (c. 22)) have been payable to him in respect of his continuing service as the holder of his United Kingdom judicial office.

(4) Any such order may also make provision-

(a) for any contributions payable by a person who remains a member of a judicial pension scheme as a result of the order, and which would otherwise be payable by deduction from his salary, to be made otherwise than by deduction from his salary as an ICC judge, and

(b) for such contributions to be collected in such manner as may be determined by the administrators of the scheme.

(5) Any such order-

(a) shall have effect notwithstanding section 68(3)(b) of the Access to Justice Act 1999, and

(b) may amend any provision of, or made under, any of the judicial pensions Acts in such manner and to such extent as the appropriate Minister considers necessary or expedient to ensure the proper administration of any scheme to which it relates.

(6) Any payments made in pursuance of such arrangements as are mentioned in sub-paragraph (2)(b) to, or in respect of, a holder of a United Kingdom judicial office shall be charged on, and paid out of, the Consolidated Fund.

(7) In this paragraph-

"the appropriate Minister" means-

(a) in relation to a judicial office whose jurisdiction is exercisable exclusively in Scotland, the Secretary of State, and

(b) otherwise, the Lord Chancellor;

"the judicial pensions Acts" means-

(a) the County Courts Act (Northern Ireland) 1959 (c. 25) (N.I.),

(b) the Sheriffs' Pensions (Scotland) Act 1961 (c. 42),

(c) the Judicial Pensions Act 1981 (c. 20), and

(d) the Judicial Pensions and Retirement Act 1993 (c. 8);

"judicial pension scheme" means a scheme established by and in accordance with any of those Acts; and

"United Kingdom judicial office" means the office of-

(a) Lord Justice of Appeal, Justice of the High Court or Circuit judge, in England and Wales,

(b) judge of the Court of Session or sheriff, in Scotland, or

(c) Lord Justice of Appeal, judge of the High Court or county court judge, in Northern Ireland.

(8) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

SCHEDULE 2

DELIVERY UP OF PERSONS SUBJECT TO CRIMINAL PROCEEDINGS, &C. PART 1
CRIMINAL PROCEEDINGS

Meaning of "criminal proceedings"

1 In this Part of this Schedule "criminal proceedings" means proceedings before a national court-

(a) for dealing with an individual accused of an offence,

(b) for dealing with an individual convicted of an offence, or

(c) on an appeal from any proceedings within paragraph (a) or (b).

Criminal proceedings in England and Wales or Northern Ireland

2

(1) Where-

(a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and

(b) criminal proceedings against that person are pending or in progress before a court in England and Wales or Northern Ireland,

the Secretary of State shall inform the court of the request.

(2) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.

(3) If a delivery order is made and the criminal proceedings are still pending or in progress, the Secretary of State-

(a) shall consult the ICC before giving directions for the execution of the order, and

(b) may direct that the criminal proceedings shall be discontinued.

(4) Where the Secretary of State directs that criminal proceedings shall be discontinued, the court before which the proceedings are pending or in progress shall-

(a) order their discontinuance, and

(b) make any other order necessary to enable the delivery order to be executed (including any necessary order as to the custody of the person concerned).

(5) The discontinuance under this paragraph of criminal proceedings in respect of an offence does not prevent the institution of fresh proceedings in respect of the offence.

Criminal proceedings in Scotland

3

(1) Where-

(a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and

(b) criminal proceedings against that person are pending or in progress before a court in Scotland,

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

(2) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.

(3) If a delivery order is made and the criminal proceedings are still pending or in progress, the Secretary of State shall consult the ICC before giving directions for the execution of the order.

Proceedings before service court

4

(1) Where-

(a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and

(b) proceedings against that person are pending or in progress before a service court,

the Secretary of State shall inform the court of the request.

(2) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.

(3) If a delivery order is made and the proceedings before a service court are still pending or in progress, the Secretary of State-

(a) shall consult the ICC before giving directions for the execution of the delivery order, and

(b) may direct that the proceedings before the service court shall be discontinued.

(4) Where the Secretary of State directs that proceedings before a service court shall be discontinued, the court shall-

(a) order their discontinuance, and

(b) make any other order necessary to enable the delivery order to be executed (including any necessary order as to the custody of the person concerned).

(5) The discontinuance under this paragraph of proceedings before a service court in respect of an offence does not prevent the institution of fresh proceedings in respect of the offence.

Effect on custodial sentences

5

(1) Where in pursuance of Part 2 of this Act a person who is a prisoner is delivered up-

(a) into the custody of the ICC, or

(b) into the custody of a state where he is to undergo imprisonment under a sentence of the ICC,

he shall continue to be liable to complete any term of imprisonment or detention to which he had been sentenced by a national court.

But there shall be counted towards the completion of that term any time during which he is in the custody of the ICC or of another state.

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

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

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

(a) in accordance with arrangements made by the Secretary of State with the ICC, or

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

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

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

(a) the reference to the custody of the Secretary of State shall be read as a reference to the custody of the Scottish Ministers, and

(b) the Secretary of State shall consult the Scottish Ministers before making any such arrangements as are mentioned in paragraph (a) or (b).

(5) In this paragraph "prisoner" means-

(a) a person serving a sentence in a prison or other institution to which the Prison Act 1952 (c. 52), the Prisons (Scotland) Act 1989 or the Prisons Act (Northern Ireland) 1953 applies, or

(b) a person serving a sentence of detention or imprisonment imposed by a service court.

Power to suspend or revoke other orders

6

(1) This paragraph applies where a court makes a delivery order in respect of a person in respect of whom an order (other than a sentence of imprisonment or detention) has been made in criminal proceedings before a national court.

(2) The court may make any order necessary to enable the delivery order to be executed, and may in particular suspend or revoke any such order as is mentioned in sub-paragraph (1).

PART 2
EXTRADITION PROCEEDINGS

Meaning of "extradition proceedings"

7

In this Part of this Schedule "extradition proceedings" means proceedings before a court in the United Kingdom under-

(a) the Extradition Act 1989 (c. 33), or

(b) the Backing of Warrants (Republic of Ireland) Act 1965 (c. 45).

Extradition proceedings in England and Wales or Northern Ireland

8

(1) Where-

(a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and

(b) extradition proceedings against that person are pending or in progress before a court in England and Wales or Northern Ireland,

the Secretary of State shall inform the court of the request.

(2) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.

(3) If a delivery order is made and the extradition proceedings are still pending or in progress, the Secretary of State-

(a) shall consult the ICC before giving directions for the execution of the order, and

(b) may direct that the extradition proceedings shall be discontinued.

(4) Where the Secretary of State directs that extradition proceedings shall be discontinued, the court before which the proceedings are pending or in progress shall-

(a) order their discontinuance, and

(b) make any other order necessary to enable the delivery order to be executed (including any necessary order as to the custody of the person concerned).

(5) The discontinuance under this paragraph of extradition proceedings in respect of an offence does not prevent the institution of fresh extradition proceedings in respect of the offence.

Extradition proceedings in Scotland

9

(1) Where-

(a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and

(b) extradition proceedings against that person are pending or in progress before a court in Scotland,

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

(2) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.

(3) If a delivery order is made and the extradition proceedings are still pending or in progress, the Secretary of State shall consult the ICC before giving directions for the execution of the order.

Power to suspend or revoke warrant or order

10

(1) Where a court makes a delivery order in respect of a person-

(a) who has been committed under section 9 of, or paragraph 7 of Schedule 1 to, the Extradition Act 1989 (c. 33), or

(b) who has been ordered to be delivered up under section 2(1) of the Backing of Warrants (Republic of Ireland) Act 1965 (c. 45),

the court may make any such order as is necessary to enable the delivery order to be executed.

(2) The court may, in particular, suspend or revoke any warrant or other order made by a court or judicial officer in respect of the person.

PART 3
OTHER DELIVERY PROCEEDINGS

Meaning of "other delivery proceedings"

11

In this Part of this Schedule "other delivery proceedings" means proceedings before a court in the United Kingdom for a delivery order under-

(a) the United Nations (International Tribunal) (Former Yugoslavia) Order 1996 (S.I. 1996/716), or

(b) the United Nations (International Tribunal) (Rwanda) Order 1996 (S.I. 1996/1296);

and "the relevant International Tribunal", in relation to such proceedings, means the international tribunal to which the Order in question relates.

Delivery proceedings in England and Wales

12

(1) Where-

(a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and

(b) other delivery proceedings against that person are pending or in progress before a court in England and Wales,

the Secretary of State shall consult the ICC and the relevant International Tribunal.

(2) The Secretary of State shall inform the court of the request and of the outcome of the consultations.

(3) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made under this Part of this Act.

(4) If a delivery order is made under this Part of this Act and the other delivery proceedings are still pending or in progress, the Secretary of State-

(a) shall consult the ICC before giving directions for the execution of the order, and

(b) may direct that the other delivery proceedings shall be discontinued.

(5) Where the Secretary of State directs that the other delivery proceedings shall be discontinued, the court before which the proceedings are pending or in progress shall-

(a) order their discontinuance, and

(b) make any other order necessary to enable the delivery order under this Part of this Act to

be executed (including any necessary order as to the custody of the person concerned).

(6) The discontinuance under this paragraph of other delivery proceedings in respect of an offence does not prevent the institution of fresh proceedings for a delivery order in respect of the offence.

Delivery proceedings in Scotland

13

(1) Where-

(a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and

(b) other delivery proceedings against that person are pending or in progress before a court in Scotland,

the Secretary of State shall consult the ICC and the relevant International Tribunal.

(2) The Secretary of State shall inform the Scottish Ministers of the request and of the outcome of the consultations and they shall inform the court.

(3) The court shall (if necessary) adjourn the proceedings before it, for such period or periods as it thinks fit, so as to enable proceedings to be taken to determine whether a delivery order should be made.

(4) If a delivery order is made and the other delivery proceedings are still pending or in progress, the Secretary of State shall consult the ICC before giving directions for the execution of the order.

Power to suspend or revoke previous delivery order

14

(1) Where a court makes a delivery order under this Part of this Act in respect of a person in respect of whom a delivery order has been made under-

(a) the United Nations (International Tribunal) (Former Yugoslavia) Order 1996 (S.I. 1996/716), or

(b) the United Nations (International Tribunal) (Rwanda) Order 1996 (S.I. 1996/1296),

the court may make any order necessary to enable the person to be delivered up under this Part of this Act.

(2) The court may, in particular, suspend or revoke the other delivery order.

SCHEDULE 3
RIGHTS OF PERSONS DURING INVESTIGATION: ARTICLE 55

ARTICLE 55
RIGHTS OF PERSONS DURING AN INVESTIGATION

1

In respect of an investigation under this Statute, a person:

(a) Shall not be compelled to incriminate himself or herself or to confess guilt;

(b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;

(c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and

(d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.

2

Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:

(a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;

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

(c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and

(d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

SCHEDULE 4
TAKING OF FINGERPRINTS OR NON-INTIMATE SAMPLES

Nomination of court to supervise taking of evidence

1

(1) Where the Secretary of State receives a request from the ICC for assistance in obtaining evidence as to the identity of a person, he may nominate a court in England and Wales or Northern Ireland to supervise the taking of the person's fingerprints or a non-intimate sample (or both).

(2) He shall not do so unless-

(a) he is satisfied that other means of identification have been tried and have proved inconclusive, and

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

Order to provide evidence

2

(1) The nominated court may order the taking by a constable of the person's fingerprints or a non-intimate sample (or both).

(2) In the case of a non-intimate sample-

(a) the sample must be a sufficient sample within the meaning of section 65 of the Police and Criminal Evidence Act 1984 (c. 60) or, in Northern Ireland, Article 53 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)), and

(b) section 63A(2) of that Act or, in Northern Ireland, Article 63A(2) of that Order applies as to the manner of taking the sample.

(3) In the following provisions of this Schedule "the necessary identification evidence" means the fingerprints or sample (or both) required by the order of the nominated court.

Requirement to attend and provide evidence

3

(1) The order of the nominated court may require the person to attend a police station to provide the necessary identification evidence.

(2) Any such requirement-

(a) shall give the person at least seven days within which he must so attend, and

(b) may direct him to attend at a specified time of day or between specified times of day.

(3) If the person fails to attend in accordance with the order-

(a) the nominated court may issue a warrant for his arrest, and

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

The court shall inform the person concerned of the effect of this sub-paragraph. (4) Sub-paragraphs (1) to (3) do not apply where the person concerned is in prison or is otherwise lawfully detained.

In that case the necessary identification evidence may be taken at the place where he is detained or at such other place as the nominated court may direct.

Consent to taking of evidence

4

(1) The necessary identification evidence may be taken-

(a) with the appropriate consent given in writing, or

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

(2) In sub-paragraph (1) "the appropriate consent" has the meaning given by section 65 of the Police and Criminal Evidence Act 1984 or, in Northern Ireland, Article 53 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

(3) The court shall inform the person concerned of the effect of this paragraph.

Taking of evidence without consent

5

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

(2) An officer may give an authorisation under sub-paragraph (1) orally or in writing, but if he gives it orally he shall confirm it in writing as soon as is reasonably practicable.

(3) Before fingerprints or a sample are taken from a person upon an authorisation given under sub-paragraph (1), he shall be informed that the authorisation has been given.

Record of certain matters to be made

6

(1) After fingerprints or a sample are taken under this Schedule, there shall be recorded as soon as is reasonably practicable any of the following which apply-

(a) the fact that the appropriate consent has been given,

(b) any authorisation given under paragraph 5(1), and

(c) the fact that the person has been informed under paragraph 5(3) of the giving of such authorisation.

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

Checking of fingerprints or samples

7

(1) This paragraph applies to-

(a) fingerprints or samples taken under this Schedule, and

(b) information derived from such samples.

(2) The fingerprints, samples or information may be used only for the purpose of an investigation into a relevant offence.

(3) In particular, a check may not be made against them under-

(a) section 63A(1) of the Police and Criminal Evidence Act 1984 (c. 60) (checking of fingerprints and samples), or

(b) Article 63A(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (checking of fingerprints and samples),

except for the purpose of an investigation into a relevant offence.

(4) The fingerprints, samples or information may be checked, subject to sub-paragraph (2), against-

(a) other fingerprints or samples taken under this Schedule or information derived from such samples,

(b) any of the fingerprints, samples and information mentioned in section 63A(1)(a) and (b) of the Police and Criminal Evidence Act 1984 (checking of fingerprints and samples), and

(c) any of the fingerprints, samples and information mentioned in Article 63A(1)(a) and (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (checking of fingerprints and samples).

(5) For the purposes of this paragraph a "relevant offence" means an ICC crime or an offence under Part 5 of this Act.

(6) Before fingerprints or a sample are taken from a person under this Schedule, he shall be informed that they may be used as mentioned in this paragraph.

Destruction of fingerprints and samples

8

Section 64 of the Police and Criminal Evidence Act 1984 or Article 64 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (destruction of fingerprints or samples) applies to fingerprints and samples taken under this Schedule in connection with the investigation of an ICC crime as it applies in relation to fingerprints and samples taken in connection with the investigation of an offence under the law of England and Wales or Northern Ireland.

SCHEDULE 5

INVESTIGATION OF PROCEEDS OF ICC CRIME

PART 1 PRODUCTION OR ACCESS ORDERS

Application for order

1

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

(2) Any such application-

(a) in England and Wales, may be made without notice and may be granted without a hearing; and

(b) in Northern Ireland, may be made on an ex parte application to a judge in chambers.

Grounds for making order

2

(1) The judge may make an order under this Part of this Schedule if he is satisfied that there are reasonable grounds for suspecting-

(a) that a specified person has benefited from an ICC crime, and

(b) that the material to which the application relates is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made.

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

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

Production or access orders: standard orders

3

(1) The judge may order a specified person who appears to have in his possession, custody or power specified material, or material of a specified description, to which the application relates, either-

(a) to produce the material to a constable within a specified period for the constable to take away (a "production order"), or

(b) to give a constable access to the material within a specified period (an "access order").

(2) The specified period shall be seven days beginning with the date of the order unless it appears to the judge making the order that a longer or shorter period would be appropriate in the particular circumstances of the application.

(3) Where the judge makes an access order in relation to material on any premises he may, on the application of a constable, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

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

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

Production or access orders: special orders

4

(1) A production or access order may be made in relation to a person who the judge thinks is likely to have material to which the application relates in his possession, custody or power within the period of 28 days beginning with the date of the order.

(2) A production or access order may also be made in relation to material consisting of or including material which is expected to come into existence within that period.

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

(3) Where a production or access order is made by virtue of this paragraph-

(a) the order shall require the specified person to notify a named constable as soon as is reasonably practicable after any material to which the application relates comes into his possession, custody or power, and

(b) paragraph 3 has effect with the following modifications.

(4) The modifications are-

(a) that the references in paragraph 3(1) to material which the specified person has in his possession, custody or power shall be read as references to the material that comes into his possession, custody or power, and

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

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

Effect of order: general

5

(1) An order under this Part of this Schedule has effect as if it were an order of the Crown Court.

(2) Provision may be made by Crown Court Rules as to-

(a) the discharge and variation of such orders, and

(b) proceedings relating to such orders.

Effect of order: supplementary

6

(1) The following provisions have effect with respect to the effect of an order under this Part of this Schedule.

(2) Where the material to which the order relates consists of information contained in a computer-

(a) a production order has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and

(b) an access order has effect as an order to give access to the material in a form in which it is visible and legible.

(3) An order under this Part of this Schedule does not confer any right to production of, or access to, items subject to legal privilege.

(4) Subject to sub-paragraph (3), the order has effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(5) For the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984 (c. 60) or, in Northern Ireland, Articles 23 and 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (access to, and copying and retention of, seized material) material produced in pursuance of an order under this Part of this Schedule shall be treated as if it were material seized by a constable.

Order in relation to material in possession of government department

7

(1) An order under this Part of this Schedule may be made in relation to material in the possession, custody or power of a government department.

(2) An order so made-

(a) shall be served as if the proceedings were civil proceedings against the department, and

(b) may require any officer of the department, whether named in the order or not, who may for the time being have in his possession, custody or power the material concerned, to comply with it.

(3) In this paragraph "government department" means an authorised government department for the purposes of the Crown Proceedings Act 1947 (c. 44) or an authorised Northern Ireland department for the purposes of that Act as it applies to the Crown in right of Her Majesty's Government in Northern Ireland.

PART 2

SEARCH WARRANTS

Application for warrant

8

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

Effect of warrant

9

(1) A search warrant issued under this Part of this Schedule authorises any constable-

(a) to enter and search the premises specified in the warrant, and

(b) to seize and retain any material found on the search that is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued.

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

Grounds for issue of warrant

10

(1) The judge may issue a search warrant under this Part of this Schedule in the following cases.

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

(3) The second case is where the judge is satisfied-

(a) that there are reasonable grounds for suspecting that a specified person has benefited from an ICC crime,

(b) that there are grounds for making a production or access order (see paragraph 2) in relation to material on the premises, and

(c) that it would not be appropriate to make a production or access order in relation to the material for any of the following reasons.

(4) Those reasons are-

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

(b) that it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or

(c) that the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.

(5) The third case is where the judge is satisfied-

(a) that there are reasonable grounds for suspecting that a specified person has benefited from an ICC crime,

(b) that there are reasonable grounds for suspecting that there is material on the premises which cannot be particularised at the time of the application but which-

(i) relates to the specified person, or to the question whether that person has benefited from an ICC crime, or to any question as to the extent or whereabouts of the proceeds of an ICC crime, and

(ii) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, and

(c) that any of the following circumstances apply.

(6) Those circumstances are-

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises,

(b) that entry to the premises will not be granted unless a warrant is produced, or

(c) that the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.

PART 3

SUPPLEMENTARY PROVISIONS

11

In this Schedule-

"constable" includes a person commissioned by the Commissioners of Customs and Excise; and

"items subject to legal privilege" and "premises" have the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60) or, in Northern Ireland, the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

SCHEDULE 6

FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

Application for freezing order

1

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

(2) Any such application-

(a) in England and Wales, may be made without notice and may be granted without a hearing; and

(b) in Northern Ireland, may be made on an ex parte application to a judge in chambers.

Grounds for making order

2

The court may make a freezing order if it is satisfied-

(a) that a forfeiture order has been made in proceedings before the ICC, or

(b) that there are reasonable grounds for believing that a forfeiture order may be made in such proceedings,

and that the property to which the order relates consists of or includes property that is or may be affected by such a forfeiture order.

Effect of order

3

(1) A "freezing order" is an order prohibiting any person from dealing with property specified in the order otherwise than in accordance with such conditions and exceptions as may be specified in the order.

(2) A freezing order shall provide for notice to be given to persons affected by the order.

Variation or discharge of order

4

(1) A freezing order may be varied or discharged in relation to any property on the application of any person affected by the order.

(2) A freezing order shall be discharged on the conclusion of the ICC proceedings in relation to which the order was made.

Power to appoint receiver

5

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

(2) The High Court may at any time appoint a receiver-

(a) to take possession of any property specified in the order, and

(b) in accordance with the court's directions, to manage or otherwise deal with the property in respect of which he is appointed,

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

(3) The High Court may require any person having possession of property in respect of which a receiver is appointed under this paragraph to give possession of it to the receiver.

(4) The powers conferred on a receiver by this paragraph shall be exercised with a view to securing that the property specified in the order is available for satisfying the forfeiture order or, as the case may be, any forfeiture order that may be made in the ICC proceedings in relation to which the order was made.

(5) A receiver appointed under this paragraph shall not be liable to any person in respect of any loss or damage resulting from any action taken by him which he believed on reasonable grounds that he was entitled to take, except in so far as the loss or damage is caused by his negligence.

Seizure to prevent removal from jurisdiction

6

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

(2) The reference in sub-paragraph (1) to property being removed from the jurisdiction is to its being removed from England and Wales or Northern Ireland, as the case may be.

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

Registered land: England and Wales

7

(1) The Land Charges Act 1972 (c. 61) and the Land Registration Act 1925 (c. 21) apply-

(a) in relation to freezing orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and

(b) in relation to applications for freezing orders, as they apply in relation to other pending land actions.

(2) The ICC shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which a freezing order or an application for a freezing order relates.

Registered land: Northern Ireland

8

(1) The ICC shall be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.)) (cautions) as a person interested in relation to any registered land to which a freezing order or an application for such an order relates.

(2) Upon being served with a copy of a freezing order or an application for such an order, the Registrar shall, in respect of any registered land to which the order or application relates, make an entry inhibiting any dealing with the land without the consent of the High Court.

(3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) apply to an entry made under sub-paragraph (2) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.

(4) Where a freezing order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Act (Northern Ireland) 1970 (c. 25 (N.I.)), an order under paragraph 4 discharging the freezing order may direct that the entry be vacated.

(5) In this paragraph-

(a) "Registrar" and "entry" have the same meanings as in the Registration Act (Northern Ireland) 1970; and

(b) "registered land" has the meaning assigned to it by section 45(1)(a) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

Bankruptcy: England and Wales

9

(1) Where a person is adjudged bankrupt in England and Wales-

(a) property for the time being subject to a freezing order, or an order having the like effect in Scotland, made before the order adjudging him bankrupt, and

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

is excluded from the bankrupt's estate for the purposes of Part 9 of the Insolvency Act 1986 (c. 45).

(2) Where a person has been adjudged bankrupt in England and Wales, the powers conferred on a receiver appointed under paragraph 5 above shall not be exercised in relation to-

(a) property for the time being comprised in the bankrupt's estate for the purposes of that Part of that Act;

(b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under section 307, 308 or 308A of that Act (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement and certain tenancies); and

(c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of that Act.

(3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of that Act and any property of the debtor is subject to a freezing order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the freezing order.

(5) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 29th December 1986 (the date on which the Insolvency Act 1986 (c. 45) came into force), this paragraph shall have effect with the following modifications-

(a) for references to the bankrupt's estate for the purposes of Part 9 of that Act there shall be substituted references to the property of the bankrupt for the purposes of the Bankruptcy Act 1914 (c. 59);

(b) for references to the Act of 1986 and sections 280(2)(c) and 286 of that Act there shall be respectively substituted references to the Act of 1914 and to sections 26(2) and 8 of that Act;

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

(d) sub-paragraph (2)(b) shall be omitted.

Bankruptcy: Northern Ireland

10

(1) Where a person is adjudged bankrupt in Northern Ireland-

(a) property for the time being subject to a freezing order, or an order having the like effect in Scotland, made before the order adjudging him bankrupt, and

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

is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

(2) Where a person has been adjudged bankrupt in Northern Ireland, the powers conferred on a receiver appointed under paragraph 5 above shall not be exercised in relation to-

(a) property for the time being comprised in the bankrupt's estate for the purposes of that Part of that Order;

(b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under Article 280 or 281 of that Order (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement); and

(c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under Article 254(2)(c) of that Order.

(3) Nothing in that Order shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Where, in the case of a debtor, an interim receiver stands appointed under Article 259 of that Order and any property of the debtor is subject to a freezing order, the powers conferred on the receiver by virtue of that Order do not apply to property for the time being subject to the freezing order.

(5) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 1st October 1991 (the date on which the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) came into force), this paragraph shall have effect with the following modifications-

(a) for references to the bankrupt's estate for the purposes of Part IX of that Order there shall be substituted references to the property of the bankrupt for the purposes of the Bankruptcy Acts (Northern Ireland) 1857 to 1980;

(b) sub-paragraph (2)(b) shall be omitted;

(c) for the reference in sub-paragraph (2)(c) to Article 254(2)(c) of that Order there shall be substituted a reference to Articles 28(4), (5)(c) and (11) and 30(6)(c) of the Bankruptcy Amendment (Northern Ireland) Order 1980 (S.I. 1980/561 (N.I. 4));

(d) for the reference in sub-paragraph (3) to that Order there shall be substituted a reference to the Bankruptcy Acts (Northern Ireland) 1857 to 1980; and

(e) for the reference in sub-paragraph (4) to an interim receiver appointed under Article 259 of that Order there shall be substituted a reference to a receiver or manager appointed under section 68 of the Bankruptcy (Ireland) Amendment Act 1872 (c. 58).

Winding up: England and Wales

11

(1) Where an order for the winding up of a company has been made under the Insolvency Act 1986 (c. 45), or a resolution has been passed by a company for voluntary winding up under that Act, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to-

(a) property for the time being subject to a freezing order, or an order having the like effect in Scotland, made before the relevant time, and

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

(2) Where such an order has been made or such a resolution has been passed, the powers conferred on a receiver appointed under paragraph 5 shall not be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable-

(a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) In this paragraph-

"company" means any company which may be wound up under the Insolvency Act 1986; and
"the relevant time" means-

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;

(b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and

(c) in any other case where such an order has been made, the time of the making of the order.

(5) In any case in which a winding up of a company commenced or is treated as having commenced before 29th December 1986 (the date on which the Insolvency Act 1986 (c. 45) came into operation), this paragraph shall have effect with the substitution for references to that Act of references to the Companies Act 1985 (c. 6).

Winding up: Northern Ireland

12

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

(a) property for the time being subject to a freezing order, or an order having the like effect in Scotland, made before the relevant time, and

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

(2) Where such an order has been made or such a resolution has been passed, the powers conferred on a receiver appointed under paragraph 5 shall not be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable-

(a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Insolvency (Northern Ireland) Order 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) In this paragraph-

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

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;

(b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and

(c) in any other case where such an order has been made, the time of the making of the order.

(5) In any case in which a winding up of a company commenced or is treated as having commenced before 1st October 1991 (the date on which the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) came into operation), this paragraph shall have effect with the substitution for references to that Order of references to the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).

Protection of insolvency practitioners

13

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

(a) he reasonably believes that he is entitled to do so in the exercise of his functions, and

(b) he would be so entitled if the property were not subject to a freezing order.

(2) The insolvency practitioner shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence.

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

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

(b) for so much of his remuneration as may be reasonably assigned for his acting in connection with those proceedings.

(4) Sub-paragraphs (1) to (3) are without prejudice to the generality of any provision contained in the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989.

(5) In this paragraph "insolvency practitioner", in any part of the United Kingdom, means a person acting as an insolvency practitioner in that or any other part of the United Kingdom.

(6) For the purpose of sub-paragraph (5) any question whether a person is acting as an insolvency practitioner in England and Wales or in Scotland shall be determined in accordance with section 388 of the Insolvency Act 1986, except that-

(a) the reference in section 388(2)(a) to a permanent or interim trustee in the sequestration of a debtor's estate shall be taken to include a reference to a trustee in sequestration,

(b) section 388(5) shall be disregarded, and

(c) the expression shall also include the Official Receiver acting as receiver or manager of property.

(7) For the purpose of sub-paragraph (5) any question whether a person is acting as an insolvency practitioner in Northern Ireland shall be determined in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989, except that-

(a) Article 3(5) shall be disregarded, and

(b) the expression shall also include the Official Receiver acting as receiver or manager of property.

Interpretation

14

(1) For the purposes of this Schedule-

(a) "property" includes money and all other property, real or personal, heritable or moveable, and including things in action and other intangible or incorporeal property; and

(b) "dealing with property" includes (without prejudice to the generality of that expression)-

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

(ii) removing the property from England and Wales or Northern Ireland.

(2) For the purposes of this Schedule ICC proceedings are concluded-

(a) when there is no further possibility of a forfeiture order being made in the proceedings; or

(b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all the property liable to be recovered, or otherwise).

SCHEDULE 7

DOMESTIC PROVISIONS NOT APPLICABLE TO ICC PRISONERS

Introduction

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

Provisions affecting length of sentence

2

(1) The following provisions of the law of England and Wales do not apply-

(a) section 24 of the Prison Act 1952 (c. 52) (calculation of term of sentence: meaning of "month");

(b) section 49(2) of that Act (deduction of periods unlawfully at large);

(c) section 23(3) of the Criminal Justice Act 1961 (c. 39) (discharge at weekend or on a holiday);

(d) section 67 of the Criminal Justice Act 1967 (c. 80) or section 87 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (crediting of periods of remand in custody).

(2) The following provisions of the law of Northern Ireland do not apply-
any provision of rules under section 13 of the Prisons (Northern Ireland) Act 1953 (c. 18 (N.I.)) (prison rules) as to-

(a) remission, or

(b) discharge at a weekend or on a holiday;

section 38(2) of that Act (deduction of periods unlawfully at large);

section 26(2) of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29 (N.I.)) (taking into account of time spent in custody).

Provisions relating to early release or release on licence

3

(1) The following provisions of the law of England and Wales do not apply-

section 28 of the Prison Act 1952 (c. 52) (power to discharge prisoners temporarily on grounds of ill health);

any provision of rules under section 47 of that Act (prison rules) permitting temporary release on licence;

section 32 of the Criminal Justice Act 1982 (c. 48) or Part 2 of the Criminal Justice Act 1991 (early release of prisoners);

Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43) (release on licence of life prisoners).

(2) The following provisions of the law of Northern Ireland do not apply-

any provision of rules under section 13 of the Prison Act (Northern Ireland) 1953 (c.18 (N.I.)) (prison rules) permitting temporary release on licence;

section 23 of that Act (release on licence of life prisoners);

section 24 of that Act (power to discharge prisoners temporarily on grounds of ill health).

SCHEDULE 8

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

ARTICLE 6

GENOCIDE

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

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

ARTICLE 7

CRIMES AGAINST HUMANITY

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

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2 For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law .;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

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

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

ARTICLE 8

WAR CRIMES

2 For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, or of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

…

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy as defined in article 7, paragraph 2(f), enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.

(d) Paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

(f) Paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in

the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

ARTICLE 9

ELEMENTS OF CRIMES

1
Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2
Amendments to the Elements of Crimes may be proposed by:

(a) Any State Party;

(b) The judges acting by an absolute majority;

(c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3
The Elements of Crimes and amendments thereto shall be consistent with this Statute.

SCHEDULE 9

OFFENCES AGAINST THE ICC: ARTICLE 70

ARTICLE 70

OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE

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

(a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1 to tell the truth;

(b) Presenting evidence that the party knows is false or forged;

(c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;

(d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;

(e) Retaliating against an official of the Court on account of duties performed by that or another official;

(f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.

....

4

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

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

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

SCHEDULE 10

REPEALS

Short title and chapter	*Extent of repeal*
The Army Act 1955 (3 & 4 Eliz. 2 c. 18)	In section 70- (a) in subsection (3), paragraph (ab); (b) in subsection (4), the words "or an offence of genocide"; (c) in subsection (5), the words "or an offence of genocide consisting of the killing of any person".
The Air Force Act 1955 (3 & 4 Eliz. 2 c. 19)	In section 70- (a) in subsection (3), paragraph (ab); (b) in subsection (4), the words "or an offence of genocide"; (c) in subsection (5), the words "or an offence of genocide consisting of the killing of any person".
The Geneva Conventions Act 1957 (c. 52)	In section 1- (a) in subsection (1) the words from "and on conviction on indictment" to the end; (b) subsections (3) to (5). In section 7(1), the definition of "court".
The Naval Discipline Act 1957 (c. 53)	In section 42(1)(b), the words "or of genocide consisting of the killing of any person". In section 48(2), the words "or genocide" and "or an offence of genocide consisting of the killing of any person".
The Genocide Act 1969 (c. 12)	The whole Act.
The Geneva Conventions (Amendment) Act 1995 (c. 27)	Section 1(4) and (5).