International Criminal Court (Scotland) Act 2001

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

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

PART 1 OFFENCES

Offences

1 Genocide, crimes against humanity and war crimes

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

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

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

(3) The Genocide Act 1969 (c.12) is repealed.

(4) In subsection (1) above-

"genocide" means an act of genocide as defined in article 6;
"crime against humanity" means a crime against humanity as defined in article 7; and
"war crime" means a war crime as defined in article 8.2.

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

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

2 Conduct ancillary to genocide etc.

(1) It shall be an offence for a person to engage in conduct ancillary to an act that constitutes-
(a) an offence under section 1(1) of this Act; or
(b) an offence under this section.

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

(3) It shall be an offence for a person to engage in conduct ancillary to an act committed (or intended to be committed) outwith Scotland by a person other than a United Kingdom national or a United Kingdom resident that, if the act were committed in Scotland (or were committed by a United Kingdom national or a United Kingdom resident), would constitute-
(a) an offence under section 1(1) of this Act; or
(b) an offence under this section.

(4) Subsection (3) above applies where the conduct in question consists of or includes an act committed-
(a) in Scotland; or
(b) outwith the United Kingdom by a United Kingdom national or a United Kingdom resident.

(5) The references in subsections (1) and (3) above to conduct ancillary to an act are to conduct that would constitute an ancillary offence in relation to that act if-
(a) that conduct consisted of or included an act committed in Scotland; and
(b) that act were committed in Scotland.

3 Trial and punishment of main offences

(1) This section applies in relation to-
(a) offences under section 1 of this Act;
(b) offences under section 2 of this Act; and
(c) offences ancillary to an offence within paragraph (a) or (b) above.

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

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

(4) A person convicted of-
(a) an offence involving murder; or
(b) an offence ancillary to an offence involving murder,
shall be dealt with as for an offence of murder or, as the case may be, the corresponding ancillary offence in relation to murder.

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

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

4 Offences in relation to the ICC

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

(2) The corresponding offences under the law of Scotland are-
(a) in relation to article 70.1(a) (giving false testimony when under an obligation to tell the truth), an offence under section 44(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) or at common law;
(b) in relation to article 70.1(b) to (e) (other offences), an offence at common law; and
(c) in relation to article 70.1(f) (soliciting or accepting a bribe as an official of the ICC), an offence under section 1 of the Prevention of Corruption Act 1906 (c.34) or at common law.

(3) This section and, so far as may be necessary for the purposes of this section, the enactments and rules of law relating to the corresponding offences under the law of Scotland apply to acts committed-
(a) in Scotland; or
(b) outwith the United Kingdom by a United Kingdom national or a United Kingdom resident.

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

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

5 Responsibility of military commanders and other superiors

(1) This section applies in relation to-
(a) offences under this Part of this Act; and
(b) offences ancillary to such offences.

(2) A military commander, or a person effectively acting as a military commander, shall be responsible for offences committed by forces under his effective command and control, or (as the case may be) his effective authority and control, as a result of his failure to exercise control properly over such forces where-
(a) he either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences; and
(b) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

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

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

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

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

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

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

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

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

6 Proceedings against persons becoming resident in the United Kingdom

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

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

(b) subsequently becomes a United Kingdom resident.

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

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

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

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

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

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

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

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

Supplementary provisions

7 Meaning of "ancillary offence"

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

(a) being art and part in the commission of an offence;

(b) inciting a person to commit an offence;

(c) attempting or conspiring to commit an offence;

(d) perverting, or attempting to pervert, the course of justice in connection with an offence; or

(e) defeating, or attempting to defeat, the ends of justice in connection with an offence.

8 Mental element

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

(a) genocide;

(b) a crime against humanity;

(c) a war crime; or

(d) any of the acts mentioned in article 70.1 (offences against the administration of justice),

shall be construed in accordance with this section.

(2) Unless otherwise provided by-

(a) the articles mentioned in the definition in section 1(4) of this Act of the crimes specified in subsection (1)(a) to (c) above;

(b) any relevant Elements of Crimes;

(c) section 4(1) of this Act or article 70.1; or

(d) section 5 of this Act,

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

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

(a) a person has intent-

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

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

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

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

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

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

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

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

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

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

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

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

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

10 Amendment of Criminal Procedure (Scotland) Act 1995

In section 274(2) of the Criminal Procedure (Scotland) Act 1995 (c.46) (which specifies the sexual offences in respect of which certain evidence is not admissible)-

(a) the word "or", where it occurs immediately after paragraph (g), is repealed; and

(b) (b) after paragraph (h), there shall be added"; or

(j) an offence under section 1 or 2 of the International Criminal Court (Scotland) Act 2001 (asp 13) involving-

(i) conduct constituting any of the offences mentioned in paragraphs (a) to (h) above; or

(ii) an act committed outwith Scotland which, if committed in Scotland, would constitute any of those offences.".

PART 2 ASSISTANCE

Introduction

11 Provision of assistance to the ICC

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

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

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

(2) Where facsimile transmission is used-

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

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

this Part of this Act applies as if the documents so sent were the originals of the documents so transmitted; and any such document shall be admissible in evidence accordingly.

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

Forms of assistance

12 Questioning

(1) This section applies where the Scottish Ministers receive a request from the ICC for assistance in questioning a person being investigated or prosecuted.

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

(a) the person has been informed of the rights set out in article 55 (rights of persons during an investigation under the Statute of the ICC);

(b) the fact that the person has been so informed has been recorded in writing; and

(c) the person consents to be interviewed.

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

(3) Consent for the purposes of subsection (2)(c) above may be given orally or in writing; but if given orally it shall be recorded in writing as soon as is reasonably practicable.

13 Taking or production of evidence

(1) This section applies where the Scottish Ministers receive a request from the ICC for assistance in the taking or production of evidence.

(2) The Scottish Ministers may nominate a court in Scotland to receive the evidence to which the request relates.

(3) For this purpose the nominated court-

(a) has the same powers with respect to-

(i) securing the attendance of witnesses; and

(ii) subject to subsection (5) below, the production of documents or other articles,

as it has for the purpose of other proceedings before the court; and

(b) may take evidence on oath.

(4) Any proceedings under this section shall be conducted in private.

(5) A person shall not be compelled to give evidence or produce anything in proceedings under this section that, under the Rules of Procedure and Evidence for the time being in force, the person could not be compelled to give or produce in proceedings before the ICC.

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

(7) No order for expenses shall be made in proceedings under this section.

(8) In subsection (5) above, the reference to the Rules of Procedure and Evidence is a reference to the rules adopted under article 51.

14 Taking or production of evidence: further provisions

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

(2) The court shall ensure that a record is kept of the proceedings that indicates, in particular-
(a) which persons with an interest in the proceedings were present; and
(b) which of those persons were represented and by whom.

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

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

15 Service of process

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

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

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

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

16 Entry, search and seizure

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

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

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

17 Taking of fingerprints etc.

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

18 Provision of records and documents

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

(a) the evidence given in any proceedings in Scotland in respect of conduct that would constitute an ICC crime; or

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

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

19 Investigation of proceeds of ICC crime

Where the Scottish Ministers receive a request from the ICC for assistance-

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

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

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

20 Freezing orders in respect of property liable to forfeiture

Where the Scottish Ministers receive a request from the ICC for assistance in the freezing or seizure of proceeds, property and assets or instrumentalities of crime for the purpose of eventual forfeiture, they may-

(a) authorise a person to act on behalf of the ICC for the purposes of applying for a freezing order, or applying for the variation or discharge of such an order; and

(b) direct that person to apply for such an order, or the variation or discharge of such an order, under schedule 6 to this Act (which makes provision for freezing orders in respect of property liable to forfeiture).

Supplementary provisions

21 Verification of material

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

22 Transmission of material to the ICC

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

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

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

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

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

PART 3 ENFORCEMENT OF SENTENCES AND ORDERS

Sentences of imprisonment

23 Detention in Scotland of certain prisoners

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

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

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

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

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

(3) The provisions of a Scottish warrant-

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

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

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

24 Limited disapplication of certain provisions relating to sentences

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

(a) any provision of rules made under section 39 of the Prisons (Scotland) Act 1989 (c.45) (prison rules) providing for temporary release;

(b) section 40(2) of that Act of 1989 (deduction of periods unlawfully at large); and

(c) sections 1, 1A, 2, 3, 9, 10 and 27(7) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (transfer and release of prisoners).

25 Amendment of Mental Health (Scotland) Act 1984

In section 74(6) of the Mental Health (Scotland) Act 1984 (c.36) (application, in circumstances where a person is released from a sentence of imprisonment, of provisions relating to transfer directions and restriction directions), at the end there shall be inserted "or otherwise".

Orders

26 Power to make provision for enforcement of orders

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

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

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

(2) The regulations may authorise the Scottish Ministers-

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

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

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

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

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

(6) The regulations may provide that-

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

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

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

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

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

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

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

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

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

(10) Regulations under this section-

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

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

PART 4 GENERAL

27 Supplementary provisions relating to the ICC

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

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

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

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

28 Interpretation

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

"the 2001 Act" means the International Criminal Court Act 2001 (c.17);

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

"crime against humanity" has the meaning given by section 1(4) of this Act;

"Elements of Crimes" means the Elements of Crimes set out in regulations made under section 50(3) of the 2001 Act;

"evidence" includes documents and other articles;

"genocide" has the meaning given by section 1(4) of this Act;

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

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

"United Kingdom national" means a person 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;

"United Kingdom resident" means a person who is resident in the United Kingdom; and

"war crime" has the meaning given by section 1(4) of this Act.

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

29 Crown application

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

30 Short title and commencement

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

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

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

SCHEDULE 1

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-

"Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
"Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
"Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
"Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
"Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
"Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law . . . ;
"Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
"The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

"Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3 For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

ARTICLE 8 WAR CRIMES 2 For the purpose of this Statute, "war crimes" means-

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention-

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts-

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, or of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
(xvi) Pillaging a town or place, even when taken by assault;
(xvii) Employing poison or poisoned weapons;
(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

. . .

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy as defined in article 7, paragraph 2(f), enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause-

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
(iii) Taking of hostages;
(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.

(d) Paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts-

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;
(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
(ix) Killing or wounding treacherously a combatant adversary;
(x) Declaring that no quarter will be given;
(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

(f) Paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

ARTICLE 9 ELEMENTS OF CRIMES

1 Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2 Amendments to the Elements of Crimes may be proposed by-
(a) Any State Party;
(b) The judges acting by an absolute majority;
(c) The Prosecutor.
Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3 The Elements of Crimes and amendments thereto shall be consistent with this Statute.

SCHEDULE 2

OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE: 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 3

RIGHTS OF PERSONS DURING AN 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 ETC.

Nomination of court to supervise taking of evidence

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

(2) They shall not do so unless-

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

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

(3) In this schedule-

"relevant physical data" has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995 (c.46); and

"sample" means-

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

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

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

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

Order to provide evidence

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

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

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

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

(b) may direct that the person attend at a specified time of day or between specified times of day.

(3) If the person fails to attend in accordance with the order-

(a) the nominated court may issue a warrant for the arrest of the person; and

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

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

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

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

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

Consent to taking of evidence

4 (1) The necessary identification evidence may be taken-
(a) with the consent, given in writing, of the person from whom such evidence is to be taken; or
(b) without that consent, in accordance with paragraph 5 below.

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

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

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

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

Record of certain matters to be made

6 (1) After relevant physical data or a sample is taken under this schedule, there shall be recorded as soon as is reasonably practicable any of the following which apply-
(a) the fact that the appropriate consent has been given;
(b) any authorisation given under paragraph 5(1) above; and
(c) the fact that the person has been informed under paragraph 5(4) above of the giving of such authorisation.

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

Destruction of prints and samples

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

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 the sheriff on an application by a person authorised for the purpose under section 19 of this Act.

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

Grounds for making order

2 (1) The sheriff may make an order under this Part of this schedule if satisfied that there are reasonable grounds for suspecting-

(a) that a specified person has benefited from an ICC crime; and

(b) that the material to which the application relates is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made.

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

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

Production or access orders: standard orders

3 (1) If it appears to the sheriff that there is in a specified person's possession, custody or power specified material, or material of a specified description, to which the application relates, the sheriff may order such person either-

(a) to produce the material to a constable within a specified period for the constable to take away (a "production order"); or

(b) to give a constable access to the material within a specified period (an "access order").

(2) The specified period shall be seven days beginning with the date of the order unless it appears to the sheriff making the order that a longer or shorter period would be appropriate in the particular circumstances of the application.

(3) Where an access order is made in relation to material on any premises the sheriff may, on the application of a constable, order any person who appears to the sheriff to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

(4) In sub-paragraphs (1) and (2) above "specified" means specified in the order.

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

Production or access orders: special orders

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

(3) A production or access order may also be made in relation to material consisting of or including material which is expected to come into existence within that period.

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

(4) Where a production or access order is made by virtue of this paragraph-

(a) the order shall require the specified person to notify a named constable as soon as is reasonably practicable after any material to which the application relates comes into the person's possession, custody or power; and
(b) paragraph 3 above has effect with the modifications mentioned in sub-paragraph (5) below.

(5) The modifications are-
(a) that the references in paragraph 3(1) above to material in the possession, custody or power of the specified person shall be read as references to the material that comes into the possession, custody or power of the specified person; and
(b) that the reference in paragraph 3(2) above to the date of the order shall be read as a reference to the date of the notification required by sub-paragraph (4)(a) above.

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

Supplementary provision in relation to orders

5 (1) The Scottish Ministers may by regulations make provision as to the discharge and variation of orders under this Part of this schedule.

(2) Provision may be made by act of sederunt as to proceedings relating to such orders.

(3) Regulations under sub-paragraph (1) above shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

Effect of order

6 (1) Sub-paragraphs (2) to (4) below have effect with respect to the effect of an order under this Part of this schedule.

(2) Where the material to which the order relates consists of information contained in a computer-
(a) a production order has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
(b) an access order has effect as an order to give access to the material in a form in which it is visible and legible.

(3) An order under this Part of this schedule does not confer any right to production of, or access to, items subject to legal privilege.

(4) Subject to section 39 of the 2001 Act, the order has effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise.

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

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

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

PART 2 SEARCH WARRANTS

Application for warrant

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

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;

(b) to seize and retain any material found on the search that is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued; and

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

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

Grounds for issue of warrant

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

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

(3) The case is where the sheriff is satisfied-

(a) that there are reasonable grounds for suspecting that a specified person has benefited from an ICC crime;

(b) that there are grounds for making a production or access order in relation to material on the premises; and

(c) that it would not be appropriate to make a production or access order in relation to the material for any of the reasons mentioned in sub-paragraph (4) below.

(4) The reasons are-

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

(b) that it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or

(c) that the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.

(5) The case is where the sheriff is satisfied-

(a) that there are reasonable grounds for suspecting that a specified person has benefited from an ICC crime;

(b) that there are reasonable grounds for suspecting that there is material on the premises which cannot be particularised at the time of the application but which-

(i) relates to the specified person, or to the question whether that person has benefited from an ICC crime, or to any question as to the extent or whereabouts of the proceeds of an ICC crime; and

(ii) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made; and

(c) that any of the circumstances mentioned in sub-paragraph (6) below apply.

(6) The circumstances are-

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) that entry to the premises will not be granted unless a warrant is produced; or

(c) that the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.

PART 3 INTERPRETATION

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

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 Court of Session on an application in pursuance of a direction given by the Scottish Ministers under section 20 of this Act.

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

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-

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

(b) on the application of any person affected by the order.

(2) A freezing order shall be discharged on the conclusion of the ICC proceedings in relation to which the order was made.

Power to appoint receiver

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

(2) The Court of Session may at any time appoint a receiver-

(a) to take possession of any property specified in the order; and

(b) in accordance with the court's directions, to manage or otherwise deal with the property in respect of which the receiver is appointed,

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

(3) The Court of Session may require any person having possession of property in respect of which a receiver is appointed under this paragraph to give possession of it to the receiver.

(4) The powers conferred on a receiver by this paragraph shall be exercised with a view to securing that the property specified in the order is available for satisfying the forfeiture order or, as the case may be, any forfeiture order that may be made in the ICC proceedings in relation to which the order was made.

(5) A receiver appointed under this paragraph shall not be liable to any person in respect of any loss or damage resulting from any action which the receiver believed on reasonable grounds that the receiver was entitled to take, except in so far as the loss or damage is caused by the receiver's negligence.

Inhibition of property affected by freezing order

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

(2) The warrant for inhibition-

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

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

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

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

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

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

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

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

Seizure to prevent removal from Scotland

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

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

Sequestration

8 (1) Where the estate of a person is sequestrated-

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

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

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

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

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

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

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

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

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

(4) Where, during the period before sequestration is awarded, an interim trustee stands appointed under section 2(5) of the 1985 Act and any property in the debtor's estate is subject to a freezing order, the powers conferred on the interim trustee by virtue of that Act do not apply to property for the time being subject to the freezing order.

(5) In any case in which, notwithstanding the coming into force of the 1985 Act, the Bankruptcy (Scotland) Act 1913 (c.20) applies to a sequestration, sub-paragraph (2) above shall have effect as if for paragraphs (a) to (c) there were substituted-

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

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

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

Winding up

9 (1) Where an order for the winding up of a company has been made under the 1986 Act, or a resolution has been passed by a company for voluntary winding up under that Act, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to-

(a) property for the time being subject to a freezing order made before the relevant time; and

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

(2) Where such an order is made, or such a resolution is passed, before a freezing order is made, the powers conferred on a receiver appointed under paragraph 5(2) above shall not be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable-

(a) so as to inhibit the liquidator from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the 1986 Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on a receiver so appointed.

(4) In this paragraph "the relevant time" means-

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;

(b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and

(c) in any other case where such an order has been made, the time of the making of the order.

(5) In any case in which a winding up of a company commenced or is treated as having commenced before 29th December 1986 (the date on which the 1986 Act came into operation), this paragraph shall have effect with the substitution for references to that Act of references to the Companies Act 1985.

Property subject to floating charge

10 (1) This paragraph applies where-

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

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

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

(3) If the floating charge receiver was appointed before the freezing order was made, the powers conferred on the court by paragraphs 1, 2, 4 and 5 above, and the powers of a receiver appointed under

paragraph 5(2) above, shall not be exercised in the way mentioned in sub-paragraph (4) below in relation to any property-

(a) which is held by the company; and

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

(4) The powers shall not be exercised-

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

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

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

(6) In this paragraph-

"floating charge" includes a floating charge within the meaning of section 462 of the Companies Act 1985 (c.6) (power of incorporated company to create floating charges); and

"relevant order" means-

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

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

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

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

Protection of insolvency practitioners

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

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

(b) would be entitled so to seize or dispose of the property if it were not subject to a freezing order.

(2) The insolvency practitioner shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by the insolvency practitioner's negligence.

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

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

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

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

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

(6) For the purpose of sub-paragraph (5) above any question whether a person is acting as an insolvency practitioner in Scotland or in England and Wales shall be determined in accordance with section 388 of the 1986 Act, except that-

(a) the reference in section 388(2)(a) to a permanent or interim trustee in the sequestration of a debtor's estate shall be taken to include a reference to a trustee in sequestration;

(b) section 388(5) shall be disregarded; and

(c) the expression shall also include the Official Receiver acting as receiver or manager of property.

(7) For the purpose of sub-paragraph (5) above any question whether a person is acting as an insolvency practitioner in Northern Ireland shall be determined in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405), except that-

(a) Article 3(5) shall be disregarded; and

(b) the expression shall also include the Official Receiver acting as receiver or manager of property.

Interpretation

12 (1) For the purposes of this schedule-

"the 1985 Act" means the Bankruptcy (Scotland) Act 1985 (c.66);

"the 1986 Act" means the Insolvency Act 1986 (c.45);

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

"dealing with property" includes (without prejudice to the generality of that expression)-

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

(b) removing the property from Scotland; and

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

(2) For the purposes of this schedule ICC proceedings are concluded-

(a) when there is no further possibility of a forfeiture order being made in the proceedings; or

(b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all the property liable to be recovered, or otherwise).

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