



**Isle of Man**

*Ellan Vannin*

**AT 9 of 2003**

**INTERNATIONAL CRIMINAL COURT  
ACT 2003**





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## INTERNATIONAL CRIMINAL COURT ACT 2003

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*Ellan Vannin*

## INTERNATIONAL CRIMINAL COURT ACT 2003

<i>Received Royal Assent:</i>	<i>17 June 2003</i>
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<i>Commenced:</i>	<i>1 April 2004</i>

**AN ACT** to give effect to the Statute of the International Criminal Court; to provide for offences under the law of the Island corresponding to offences within the jurisdiction of that Court; and for connected purposes.

**GENERAL NOTE:** See SD352/09 Rules of the High Court of Justice 2009 Sch 15.1 para 3 reproduced below:

“3. In any statutory provision a reference to a petition of doloance shall be construed as an application to the court in accordance with —

- (a) Chapter 9 of Part 13 (review of detention),
- (b) rule 14.16 (appeal by way of case stated), or
- (c) Chapter 2 of Part 14 (review of lawfulness of decision etc.),

as the case may require.”

## PART 1 – THE INTERNATIONAL CRIMINAL COURT

### 1 The ICC and the ICC Statute

[P2001/17/1: Cm 5990]

(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 contains supplementary provisions relating to the ICC.

## PART 2 – ARREST AND DELIVERY OF PERSONS

### *Proceedings on request*

#### **2 Request for arrest and surrender**

[P2001/17/2]

- (1) This section applies where the Attorney General receives a request from the ICC for the arrest and surrender of a person who is alleged —
  - (a) to have committed an ICC crime, or
  - (b) to have been convicted by the ICC.
- (2) The Attorney General shall transmit the request and the documents accompanying it to the High Bailiff.
- (3) If the request is accompanied by a warrant of arrest and the High Bailiff is satisfied that the warrant appears to have been issued by the ICC, he shall endorse the warrant for execution in the Island.
- (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 defendant is the person referred to in the judgment of conviction, and
  - (c) where the defendant 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 High Bailiff shall issue a warrant for the arrest of the defendant.

#### **3 Request for provisional arrest**

[P2001/17/3]

- (1) This section applies where the Attorney General receives from the ICC a request for the provisional arrest of a person who is alleged —
  - (a) to have committed an ICC crime, or
  - (b) to have been convicted by the ICC.
- (2) The Attorney General shall make an application to the High Bailiff for a warrant for the arrest of the defendant, accompanied by a statement on oath that the person making the statement has reason to believe —
  - (a) that a request has been made on grounds of urgency by the ICC for the arrest of the defendant, and
  - (b) that the defendant is in, or on his way to, the Island,

and thereupon the High Bailiff shall issue a warrant for the arrest of the defendant.



#### **4 Dealing with person arrested under provisional warrant**

[P2001/17/4]

- (1) A person arrested under a provisional warrant shall be brought before the High Bailiff as soon as is practicable.
- (2) If there is produced to the High Bailiff a section 2 warrant in respect of the defendant, the High Bailiff shall proceed as if he had been arrested under that warrant.
- (3) If no such warrant is produced, the High Bailiff shall remand the defendant pending the production of such a warrant.
- (4) The Council of Ministers shall make provision by order under paragraph 2 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 defendant is so remanded there is produced to the High Bailiff a section 2 warrant in respect of him —
  - (a) the High Bailiff shall terminate the period of remand, and
  - (b) the defendant 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 High Bailiff before the end of the period of the remand (including any extension of that period), the High Bailiff shall discharge the defendant.
- (7) The fact that the defendant has been discharged under this section does not prevent his subsequent arrest under a section 2 warrant.

#### **5 Proceedings for delivery order**

[P2001/17/5 and 6]

- (1) A person arrested under a section 2 warrant (“the defendant”) shall be brought before the High Bailiff as soon as is practicable.
- (2) If the High Bailiff 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 defendant is the person named or described in the warrant,

the High Bailiff shall make an order (a “delivery order”) that the defendant be delivered up —

- (i) into the custody of the ICC, or
- (ii) 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 Department of Home Affairs (“the Department”).

- (3) In the case of a person alleged to have committed an ICC crime, the High Bailiff 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.
- (4) In deciding whether to make a delivery order the High Bailiff 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.
- (5) Whether or not he makes a delivery order, the High Bailiff may of his own motion, and shall on the application of the defendant, determine —
  - (a) whether the defendant was lawfully arrested in pursuance of the warrant, and
  - (b) whether his rights have been respected.
- (6) In making a determination under subsection (5) the High Bailiff shall apply the principles which would be applied by the High Court on a petition of dolence.<sup>1</sup>
- (7) If the High Bailiff determines —
  - (a) that the defendant has not been lawfully arrested in pursuance of the warrant, or
  - (b) that the defendant’s rights have not been respected,he shall make a declaration to that effect, but may not grant any other relief.
- (8) In proceedings under this section —
  - (a) the High Bailiff has the like powers, as nearly as may be, including power to adjourn the case and meanwhile to remand the defendant, as if the proceedings were the summary trial of a complaint against the defendant;
  - (b) if the High Bailiff adjourns the proceedings, he shall on doing so remand the defendant;
  - (c) section 29(2) of the *Summary Jurisdiction Act 1989* (payment of costs out of Government funds) applies as if the High Bailiff had

inquired into an offence triable on information alleged to be committed by the defendant and determined not to commit the defendant for trial.

- (9) Proceedings under this section shall be treated as a summary trial before a court of summary jurisdiction for the purposes of the *Legal Aid Act 1986*.
- (10) The High Bailiff shall notify the Attorney General of any declaration under subsection (7).

## 6 Consent to surrender

[P2001/17/7]

- (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.

Such consent is referred to in this section as “consent to surrender”.

- (2) Consent to surrender may be given —
  - (a) by the defendant himself, or
  - (b) in circumstances in which it is inappropriate for the defendant 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 a form prescribed by rules of court, and
  - (b) be signed in the presence of a justice of the peace.
- (4) Where consent to surrender has been given —
  - (a) the High Bailiff shall forthwith make a delivery order, and
  - (b) he shall be taken to have waived his rights under section 10 (right to review of delivery order).
- (5) Where consent to surrender has been given, notice of that fact shall be given in writing to the Attorney General and —
  - (a) if the person is in custody, to the Department of Home Affairs;
  - (b) if the person is on bail, to the Chief Constable.

*Proceedings where delivery order is refused*

## 7 Procedure where order is refused

[P2001/17/8]

- (1) If the High Bailiff refuses to make a delivery order, he shall —
  - (a) make an order remanding the defendant, and
  - (b) notify the Attorney General of his decision and of the grounds for it.

- (2) If the High Bailiff is informed without delay that an appeal is to be brought under section 8, the order remanding the defendant shall continue to have effect.
- (3) If the High Bailiff is not so informed, he shall discharge the defendant.

## **8 Appeal against refusal of delivery order**

[P2001/17/9]

- (1) If the High Bailiff refuses to make a delivery order, the Attorney General may appeal against the decision to the High Court.

No leave 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 High Bailiff to make a delivery order in accordance with the decision of the High Court.

- (3) An order for the remand of the defendant which continues in force under section 7(2) shall cease to have effect at the expiration of 7 days beginning with the dismissal of the appeal under this section unless within that period the Attorney General applies for leave to appeal to Her Majesty in Council.

Subject to that, any such order shall have effect so long as the case is pending.

- (4) For the purpose of subsection (3), unless proceedings are discontinued, a case is pending until there is no step that the Attorney General can take (disregarding any power of a court to allow a step to be taken out of time).

*Proceedings where court makes delivery order*

## **9 Procedure where delivery order is made**

[P2001/17/11]

- (1) Where the High Bailiff makes a delivery order, he shall —
  - (a) commit the defendant to custody or on bail to await the Department's directions as to the execution of the order,
  - (b) inform the defendant of his rights under section 10 (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 Attorney General of his decision.
- (2) Where the High Bailiff commits the defendant to custody under subsection (1)(a), he may subsequently remand him on bail.

- (3) Where a delivery order is made by the High Court subsections (1)(a) and (c) and (2) apply as they apply to the High Bailiff on making a delivery order.

## **10 Right to review of delivery order**

[P2001/17/12]

- (1) This section applies where a delivery order is made by the High Bailiff, unless the defendant —
  - (a) waives his rights under this section (see section 11), or
  - (b) is taken to have done so (see section 6(4)(b)).
- (2) The defendant may, before the end of the period of 15 days beginning with the date on which the order is made, apply to the High Court for a review of the order.
- (3) Directions of the Department for the execution of a delivery order shall not have effect —
  - (a) until after the end of the period mentioned in subsection (2), or
  - (b) if before the end of that period an application under subsection (2) is made, while proceedings on the application are still pending.
- (4) Proceedings on an application under subsection (2) 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.
- (5) On an application under subsection (2) —
  - (a) the High Court shall set aside the delivery order and order the defendant'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 High Bailiff (but with the substitution in section 5(5) for "makes a delivery order" of "sets aside the delivery order").

## **11 Waiver of right to review**

[P2001/17/13]

- (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 defendant, or

- (b) in circumstances in which it is inappropriate for the defendant 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 a form prescribed by rules of court, and
  - (b) be signed in the presence of a justice of the peace.
- (4) Where the defendant has waived his right to review of the delivery order —
  - (a) no application under section 10(2) may be made, and
  - (b) the order shall be taken for all purposes to be validly made.
- (5) Where the defendant has waived his right to review, notice in writing of that fact shall be given to the Attorney General and —
  - (a) if the person is in custody, to the Department of Home Affairs;
  - (b) if the person is on bail, to the Chief Constable.

*Warrants, custody, bail and related matters*

## **12 Effect of warrant of arrest**

[P2001/17/14]

- (1) For the purposes of any statutory provision or rule of law relating to warrants of arrest a section 2 warrant or provisional warrant shall be treated as if it were a warrant for the arrest of a person for an offence committed in the Island.
- (2) Any such warrant may be 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 the High Bailiff.

## **13 Effect of delivery order**

[P2001/17/15]

- (1) A delivery order is sufficient authority for any person acting in accordance with the directions of the Department to receive the defendant, 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 Department.
- (2) Where a delivery order is in force the defendant is deemed to be in legal custody at any time when, being —
  - (a) in the Island, or
  - (b) on board a Manx ship,

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 defendant to or from any place or, to keep him in custody, has all the powers, authority, protection and privileges of a constable.
- (4) Where a delivery order is in force and the defendant 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.

#### **14 Bail and custody: general**

[P2001/17/16 and 17]

- (1) Where under this Part the High Bailiff has power to remand a defendant, he may remand the defendant in custody or on bail.
- (2) Nothing in this Part shall be taken as authorising the High Bailiff to grant bail to a person who is serving a sentence of custody to which he has been sentenced by a court in the Island, or who is in custody awaiting trial or sentence by a court in the Island.
- (3) Where the High Bailiff —
  - (a) grants bail under this Part but is unable to release the defendant 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 High Bailiff shall in the meantime commit the defendant to custody.

#### **15 Bail and custody: consultation with the ICC, etc**

[P2001/17/18]

Where an application for bail is made in proceedings under this Part —

- (a) the High Bailiff shall notify the Attorney General of the application;
- (b) the Attorney General shall consult the ICC; and
- (c) the High Bailiff shall not grant bail without considering —
  - (i) any recommendations made by the ICC;
  - (ii) whether, given the gravity of the offence or offences the defendant 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
  - (iii) whether any necessary measures have been or will be taken to secure that the defendant will surrender to custody in accordance with the terms of his bail.

**16 Discharge of person not delivered up**

[P2001/17/19]

- (1) If the defendant is not delivered up under a delivery order within 40 days after it was made, he may make an application to the High Court for his discharge.
- (2) On an application under this section the High Court shall order the defendant's discharge unless reasonable cause is shown for the delay.

**17 Discharge of person no longer required to be surrendered**

[P2001/17/20]

Where the ICC informs the Attorney General that a person arrested under this Part is no longer required to be surrendered, the Attorney General shall notify the High Bailiff of that fact, and the High Bailiff shall thereupon make an order for the defendant's discharge.

*Request for transit and unscheduled landing***18 Request for transit**

[P2001/17/21]

- (1) Where the Attorney General receives a request from the ICC for transit of a person being surrendered by a state other than the United Kingdom —
  - (a) he shall send a copy of the request to the Department; and
  - (b) the Department shall notify him whether it accedes to the request.
- (2) Where the Department accedes to the request —
  - (a) the request shall be treated for the purposes of this Part as if it were a request for the defendant's arrest and surrender;
  - (b) the warrant accompanying the request shall be deemed to have been endorsed under section 2(3);
  - (c) the defendant shall be treated on arrival in the Island as if he had been arrested under that warrant;
  - (d) section 5(2) applies with the substitution for paragraph (a) of the following —
    - “(a) that the Department has acceded to the request for transit; and”;
  - (e) section 10(2) applies with the substitution for “15 days” of “2 days”.
- (3) A person in transit under this section shall not be granted bail.



**19    Unscheduled landing**

[P2001/17/22]

- (1)    If a person being surrendered by a state makes an unscheduled landing in the Island, he may be arrested by any constable and shall be brought before the High Bailiff as soon as is practicable.
- (2)    The High Bailiff shall remand him in custody pending —
  - (a)    receipt by the Attorney General of a request from the ICC for his transit,
  - (b)    the Department's decision whether to accede to the request, and
  - (c)    the notification of that decision to the Attorney General.
- (3)    If no such request is received by the Attorney General before the end of the period of 96 hours beginning with the time of the defendant's unscheduled landing, or the Department informs the Attorney General that it has decided not to accede to such a request, —
  - (a)    the Attorney General shall notify the High Bailiff of that fact, and
  - (b)    the High Bailiff shall thereupon discharge the defendant.
- (4)    If such a request is transmitted to the Attorney General before the end of that period —
  - (a)    he shall notify the High Bailiff of the request,
  - (b)    the High Bailiff shall thereupon terminate the period of remand, and
  - (c)    section 18 applies with the substitution in subsection (2)(c) for "on arrival in the Island" of "on notification to the High Bailiff of the request for transit".

*Supplementary provisions***20    Provisions as to state or diplomatic immunity**

[P2001/17/23: SI 1981/1112]

- (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) 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 State Immunity Act 1978 (an Act of Parliament), as it has effect in the Island,
  - (b) any other statutory provision made for the purpose of implementing an international obligation, or
  - (c) any rule of law derived from customary international law,or which would attach to that person under the Diplomatic Privileges Act 1964, the Consular Relations Act 1968 or the International Organisations Act 1968 (Acts of Parliament) if the Island were a part of the United Kingdom.

## **21 Delivery up of persons subject to criminal proceedings, etc**

[P2001/17/24: SI 1997/282]

Schedule 2 makes provision for cases where the Attorney General 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 court in the Island, or who has been dealt with in such proceedings,
- (b) against whom extradition proceedings are pending or in progress in the Island, 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 Island for a delivery order under the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Isle of Man) Order 1997, or against whom a delivery order has been made in such proceedings.

## 22 Documents having effect as warrants, etc

[P2001/17/25]

- (1) For the purposes of this Part —
  - (a) the copy of a warrant issued by the ICC which is transmitted to the Attorney General, and
  - (b) a copy of that copy, certified by or on behalf of the Attorney General as a true copy,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, and any such document shall be receivable 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.
- (4) Subsection (3) does not affect the validity of anything done in reliance on the original warrant.

## 23 Interpretation of Part 2

In this Part —

“**defendant**” means a person in respect of whom —

- (a) a request referred to in section 2(1)(a) or section 3(1)(a) is made, or
- (b) a section 2 warrant or a provisional warrant is issued, or
- (c) a delivery order or an application for a delivery order is made,

or who is being surrendered by a state other than the United Kingdom, as the context may require;

“**delivery order**” means an order under section 5(2);

“**the Department**” means the Department of Home Affairs;

“**provisional warrant**” means a warrant issued under section 3;

“**section 2 warrant**” means a warrant endorsed or issued under section 2.

## PART 3 – OTHER FORMS OF ASSISTANCE

### *Introduction*

#### **24 Provision of assistance**

[P2001/17/27]

- (1) This Part applies 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, and 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*

#### **25 Questioning**

[P2001/17/28]

- (1) This section applies where the Attorney General 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.
- (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.

## **26 Taking or production of evidence**

[P2001/17/29]

- (1) This section applies where the Attorney General 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 Attorney General shall direct the High Bailiff to receive the evidence to which the request relates.
- (3) For this purpose the High Bailiff —
- (a) has the same powers with respect to securing the attendance of witnesses and the production of documents or other articles as he has for the purpose of other proceedings before him; 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.
- (5) If in order to comply with the request it is necessary for the evidence received by the High Bailiff to be verified in any manner, the direction under subsection (2) shall specify the nature of the verification required.
- (6) No order for costs shall be made in proceedings under this section.

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

[P2001/17/30]

- (1) The following provisions apply in relation to proceedings before the High Bailiff under section 26 and the evidence received in the proceedings.
- (2) The High Bailiff may, if he 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 proceedings.
- (3) The High Bailiff shall ensure that an entry of the proceedings is made in the order book indicating, 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 entry shall not be open to inspection except as authorised by the Attorney General or with the leave of the High Bailiff.
- (5) A copy of the entry shall be sent to the Attorney General for transmission to the Secretary of State and the ICC.

## **28 Service of process**

[P2001/17/31]

- (1) This section applies where the Attorney General receives from the ICC a summons or other document together with a request for it to be served on a person in the Island.
- (2) The Attorney General may direct a coroner to serve the document personally on that person.
- (3) If the document is so served, the coroner shall forthwith inform the Attorney General when and how it was served.
- (4) If it does not prove possible to serve the document, the coroner shall forthwith inform the Attorney General of that fact and of the reason.

## **29 Transfer of detainee to give evidence or assist in investigation**

[P2001/17/32: SI 1991/2630: 1997/275]

- (1) This section applies where the Attorney General receives a request from the ICC for the temporary transfer of a detainee to the ICC for purposes of identification or for obtaining testimony or other assistance.
- (2) The Attorney General shall transmit the request to the Department, who shall issue a warrant (a “transfer warrant”) requiring the detainee to be delivered up, in accordance with arrangements made by the Department with the ICC, into the custody of the ICC.
- (3) A transfer warrant shall not be issued unless the detainee consents to the transfer, but consent may not be withdrawn after the issue of the warrant.
- (4) Sections 13 and 21 and Schedule 2 apply in relation to a transfer warrant under this section as they apply in relation to a delivery order under Part 2.
- (5) In this section “detainee” means —
  - (a) a person serving a sentence in an institution within the meaning of the *Custody Act 1995*, or
  - (b) 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 custody 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
  - (iv) a person detained under any provision of the Immigration Act 1971 (an Act of Parliament), as it has effect in the Island.
- (6) For the purposes of the Immigration Acts a person detained under any provision of the Immigration Act 1971 (an Act of Parliament), as it has effect in the Island, is not to be regarded as having left the Island 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).
- (7) In subsection (6) “the Immigration Acts” means the Immigration Act 1971, the Immigration Act 1988 and the Asylum and Immigration Appeals Act 1993 (Acts of Parliament), as they have effect in the Island.

### 30 Entry, search and seizure

[P2001/17/33]

- (1) Where the Attorney General receives from the ICC a request for assistance which appears to him to require the exercise of any of the powers conferred by Part II of the *Police Powers and Procedures Act 1998*, the Attorney General shall direct a constable to apply for a warrant or order under the said Part II.
- (2) The said Part II shall apply in relation to an ICC crime as it applies to a serious offence (within the meaning of section 79 of that Act).<sup>2</sup>

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

[P2001/17/34]

- (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 meanings given by section 69 of the *Police Powers and Procedures Act 1998*.

### 32 Orders for exhumation

[P2001/17/35]

A coroner of inquests may by a warrant under his hand order the exhumation of the body of a person (“the deceased”) where it appears to him that it is necessary for the body to be exhumed for the purposes of any proceedings before the ICC which have been instituted or are contemplated in respect of an ICC crime involving the death of the deceased or of some other person who came by his death in circumstances connected with the death of the deceased.

**33 Provision of records and documents**

[P2001/17/36]

- (1) This section applies where the Attorney General receives a request from the ICC for the provision of records and documents relating to —
  - (a) the evidence given in any proceedings in the Island 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 Attorney General shall take such steps as appear to him to be appropriate to obtain the records and documents requested.

**34 Investigation of proceeds of ICC crime**

[P2001/17/37]

- (1) Where the Attorney General 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 Attorney General shall apply for an order or warrant under Schedule 5.
- (2) In that Schedule —
  - (a) Part 1 makes provision for production orders and access orders,
  - (b) Part 2 makes provision for the issuing of search warrants, and
  - (c) Part 3 contains supplementary provisions.

**35 Freezing orders in respect of property liable to forfeiture**

[P2001/17/38]

Where the Attorney General 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 shall apply on behalf of the ICC for a freezing order under Schedule 6.

*National security***36 Production or disclosure prejudicial to national security**

[P2001/17/39]

- (1) Nothing in any of the provisions of this Part requires or authorises the production of documents, or the disclosure of information, which would be prejudicial to the security of the United Kingdom or the Island.



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

*Supplementary provisions*

**37 Verification of material**

[P2001/17/40]

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 Attorney General may give directions as to the nature of the verification required.

**38 Transmission of material to the ICC**

[P2001/17/41]

- (1) Any evidence or other material obtained under this Part, together with any requisite verification, shall be sent to the Attorney General 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*

**39 Detention in the Island in pursuance of ICC sentence**

[P2001/17/42]

- (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,
  - (b) the Secretary of State informs the ICC that the designation is accepted, and

- (c) the Secretary of State is minded that the prisoner should be detained in the Island.
- (2) If the Department agrees that the prisoner should be detained in the Island, it shall issue a warrant authorising —
  - (a) the bringing of the prisoner to the Island,
  - (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.
- (3) The provisions of a warrant under subsection (2) may be varied by the Department, 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 the Island shall be treated for all purposes, subject to subsection (5), as if he were subject to a sentence of custody imposed by a court of General Gaol Delivery.
- (5) The following provisions of the *Custody Act 1995* —
  - (a) section 5(2) (deduction of periods unlawfully at large);
  - (b) section 6 (crediting of periods of remand in custody);
  - (c) section 7(2) (calculation of term of sentence: meaning of “month”);
  - (d) section 22 (power to discharge detainees temporarily on grounds of ill health); and
  - (e) Schedule 2 (early release of prisoners);and any provision of rules under section 21 of that Act (custody rules) permitting temporary release on licence, do not apply in relation to a person detained in the Island in pursuance of a sentence of the ICC.
- (6) In this Part “**the Department**” means the Department of Home Affairs.

#### 40 Temporary return or transfer of custody to another state

[P2001/17/43]

- (1) This section applies where the Department 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) The Department 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 the other state, as the case may be, and

- (c) give such directions as to the custody, surrender and (where appropriate) return of the prisoner as appear to it appropriate to give effect to the arrangements.
- (3) Where the prisoner is temporarily returned to the custody of the ICC, the warrant authorising his detention in the Island shall continue to have effect so as to apply to him again on his return.

#### **41 Transfer from the Island to the United Kingdom**

[P2001/17/44]

- (1) This section applies where an order is made by the Secretary of State or the Scottish Ministers under section 42 of the International Criminal Court Act 2001 (an Act of Parliament), with the consent of the Department, authorising the taking of the prisoner to any part of the United Kingdom.
- (2) The Department shall —
  - (a) issue a warrant authorising the prisoner's transfer in accordance with the order, and
  - (b) give such directions as to the custody, surrender and (where appropriate) return of the prisoner as appear to it appropriate to give effect to the order.

#### **42 Custody of prisoner in transit, etc**

[P2001/01/47]

- (1) This section applies in relation to times when a person ("the prisoner") is subject to a warrant under any provision of this Part, but is not in legal custody under the *Custody Act 1995*.
- (2) The prisoner shall be deemed to be in the legal custody of the Department at any time when, being —
  - (a) in the Island, or
  - (b) on board a Manx ship,he is being taken to or from any place or is being kept in custody.
- (3) The Department 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 of a constable.
- (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).

*Other orders***43 Power to make provision for enforcement of other orders**

[P2001/17/49]

- (1) The Council of Ministers may make provision by regulations for the enforcement in the Island 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 Department —
  - (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 the Department to be necessary.
- (3) The regulations shall provide for the registration of the order by a specified court in the Island 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 specified court in the Island.
- (7) The regulations may for that purpose apply any statutory provision relating to the enforcement in the Island of orders of a court of a country or territory outside the Island.
- (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 costs 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 shall not have effect unless they are approved by Tynwald.

## PART 5 – OFFENCES UNDER MANX LAW

### *Introduction*

#### 44 Meaning of “genocide”, “crime against humanity” and “war crime”

[P2001/17/50]

- (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 Council of Ministers shall set out in regulations the text of the Elements of Crimes referred to in subsection (2), as amended from time to time.
- (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, being a reservation or declaration which extends to the Island.
- (5) The Council of Ministers may by order —
- (a) certify that such a reservation or declaration has been made and extends to the Island and the terms in which it was made;
  - (b) if any such reservation or declaration is withdrawn or has ceased to extend to the Island (in whole or part), certify that fact and revoke or amend any order containing the terms of that reservation or declaration.
- (6) Regulations under subsection (3) and an order under subsection (5) shall be laid before Tynwald as soon as may be after they are made.

- (7) In interpreting and applying the provisions of the articles referred to in subsection (1) the court shall take into account —
  - (a) any relevant judgment or decision of the ICC, and
  - (b) any other relevant international jurisprudence.
- (8) The relevant provisions of the articles of the ICC Statute referred to in this section are set out in Schedule 7; and 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.

#### **45 Genocide, crimes against humanity and war crimes**

[P2001/17/51]

- (1) It is an offence against the law of the Island for a person to commit genocide, a crime against humanity or a war crime.
- (2) This section applies to acts committed —
  - (a) in the Island, or
  - (b) outside the Island by a United Kingdom national, a Manx resident or a person subject to UK service jurisdiction.

#### **46 Conduct ancillary to genocide, etc. committed outside jurisdiction**

[P2001/17/52]

- (1) It is an offence against the law of the Island for a person to engage in conduct ancillary to an act to which this section applies.
- (2) This section applies to an act which, if committed in the Island, would constitute —
  - (a) an offence under section 45 (genocide, crime against humanity or war crime), or
  - (b) an offence under this section,but which, being committed (or intended to be committed) outside the Island, 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 the Island.
- (4) This section applies where the conduct in question consists of or includes an act committed —
  - (a) in the Island, or
  - (b) outside the Island by a United Kingdom national, a Manx resident or a person subject to UK service jurisdiction.

**47 Trial and punishment of main offences**

[P2001/17/53]

- (1) This section applies to —
  - (a) offences under section 45 (genocide, crimes against humanity and war crimes),
  - (b) offences under section 46 (conduct ancillary to genocide, etc. committed outside jurisdiction), and
  - (c) offences ancillary to an offence within paragraph (a) or (b).
- (2) The offence is triable only on information.
- (3) 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 the Island, constitute murder.
- (4) In any other case a person convicted of an offence is liable to custody for a term not exceeding 30 years.
- (5) Subsections (3) and (4) are subject to section 50B (restriction of penalties in relation to retrospective application of certain offences).<sup>3</sup>

**48 Offences in relation to the ICC**

[P2001/17/54]

- (1) A person intentionally committing any of the acts mentioned in article 70.1(a) (giving false testimony when under an obligation to tell the truth) is guilty of an offence and liable in conviction on information to custody for a term not exceeding 7 years or to a fine, or to both.
- (2) A person intentionally committing any of the acts mentioned in article 70.1(b) to (f) (other offences against the administration of justice in relation to the ICC) is guilty of an offence and liable —
  - (a) on conviction on information, to custody for a term not exceeding 5 years or to a fine, or to both;
  - (b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.<sup>4</sup>
- (3) In interpreting and applying the provisions of article 70.1 the court shall take into account —
  - (a) any relevant judgment or decision of the ICC, and
  - (b) any other relevant international jurisprudence.

- (4) This section applies to acts committed —
  - (a) in the Island, or
  - (b) outside the Island by a United Kingdom national, a Manx 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) The relevant provisions of article 70.1 are set out in Schedule 8.

#### 49 Protection of victims and witnesses

[P2001/17/57]

- (1) This section applies to —
  - (a) Schedule 2 to the *Sexual Offences Act 1992* (protection of victims of sexual offences); and
  - (ab) Part 8 of the *Sexual Offences and Obscene Publications Act 2021*; or<sup>5</sup>
  - (b) Part 8 of the *Children and Young Persons Act 2001*.
- (2) The enactments to which this section applies (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 45 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 45 involving conduct constituting the substantive offence in question, and
    - (ii) an offence under section 46 involving conduct constituting that ancillary offence in relation to an act to which that section applies involving conduct constituting the substantive offence in question.
- (3) In subsection (1) —
  - (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 the Island.
- (4) Until the coming into operation of Part 8 of the *Children and Young Persons Act 2001*, the reference to that Part in subsection (1)(b) shall be read as a reference to Part III of the *Children and Young Persons Act 1966*.



*Supplementary provisions***50 Responsibility of commanders and other superiors**

[P2001/17/65]

- (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 —
  - (a) any relevant judgment or decision of the ICC, and
  - (b) 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.

## **50A Retrospective application of certain offences**

[P2001/17/65A]

- (1) Section 45 applies to acts committed on or after 1 January 1991.
- (2) But it does not apply to a crime against humanity, or a war crime within article 8(2)(b) or (e) committed by a person before 1 April 2004 unless, at the time the act constituting that crime was committed, the act amounted in the circumstances to a criminal offence under international law.
- (3) Section 46 applies to conduct in which a person engaged on or after 1 January 1991, and in subsections (2) and (3) of that section references to an offence include an act or conduct which would not constitute an offence under the law of the Island but for this section.
- (4) Any enactment or rule of law relating to an offence ancillary to a relevant Part 5 offence —
  - (a) applies to conduct in which a person engaged on or after 1 January 1991, and
  - (b) applies even if the act or conduct constituting the relevant Part 5 offence would not constitute such an offence but for this section.
- (5) But section 46 and any enactment or rule of law relating to an offence ancillary to a relevant Part 5 offence do not apply to —
  - (a) conduct in which the person engaged before 1 April 2004, or
  - (b) conduct in which the person was engaged on or after that date which was ancillary to an act or conduct which —
    - (i) was committed or engaged in before that date, and
    - (ii) would not constitute a relevant Part 5 offence, or fall within section 46(2), but for this section,

unless, at the time that the person engaged in the conduct it amounted in the circumstances to a criminal offence under international law.
- (6) Section 50, so far as it has effect in relation to relevant Part 5 offences —
  - (a) applies to failures to exercise control of the kind mentioned in section 50(2) or (3) which occurred on or after 1 January 1991, and
  - (b) applies even if the act or conduct constituting the relevant Part 5 offence would not constitute such an offence but for this section.
- (7) But section 50, so far as it has effect in relation to relevant Part 5 offences, does not apply to a failure to exercise control of the kind mentioned in section 50(2) or (3) that occurred before 1 April 2004 unless, at the time the failure occurred, it amounted in the circumstances to a criminal offence under international law.

- (8) In this section “relevant Part 5 offence” means an offence under section 45 or 46 or an offence ancillary to such an offence.
- (9) Section 44(8) applies for the purposes of subsection (2) above as it applies for the purposes of section 44.<sup>6</sup>

## **50B Modification of penalties: provisions supplemental to section 50A**

[P2001/17/65B]

- (1) In the case of a pre-existing offence committed before 1 April 2004, the reference in section 47(4) to “30 years” is to be read as a reference to “14 years”.
- (2) In the case of an offence falling within section 53(2)(d) that is ancillary to a pre-existing offence committed before 1 April 2004, nothing in section 47(3) and (4) disapplies the penalties provided for in sections 7 and 8 of the *Criminal Law Act 1981*.
- (3) In this section “pre-existing offence” means —
  - (a) an offence under section 45 on account of an act constituting genocide, if at the time that the act was committed it also amounted to an offence by virtue of section 1 of the *Genocide (Isle of Man) Act 1969*;
  - (b) an offence under section 45 on account of an act constituting a war crime, if at the time that the act was committed it also amounted to an offence under section 1 of the Geneva Conventions Act 1957 (of Parliament) (grave breaches of the Conventions) as that Act had effect in the Island by virtue of the Geneva Conventions Act (Isle of Man) Order 1970 and the Geneva Conventions Act (Isle of Man) Order 1999;<sup>7</sup>
  - (c) an offence of a kind mentioned in section 53(2)(a) to (c) which is ancillary to an offence under paragraph (a) or (b) above.<sup>8</sup>

## **51 Mental element etc**

[P2001/17/56 and 66]

- (1) In determining whether an offence under this Part has been committed the court shall apply the principles of the law of the Island.
- (2) 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 administration of justice in relation to the ICC),

shall be construed in accordance with the following provisions of this section.

- (3) Unless otherwise provided by —
- (a) the articles mentioned in the definition in section 44(1) of the crimes specified in subsection (2)(a) to (c), or any relevant Elements of Crimes (see section 44(2)),
  - (b) section 48(1) or (2) or article 70.1 (offences in relation to the ICC), or
  - (c) section 50 (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.
- (4) 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.
- (5) In interpreting and applying subsections (3) and (4) (which correspond to article 30) the court shall take into account any relevant judgment or decision of the ICC.

## **52 Proceedings against persons becoming resident within the jurisdiction**

[P2001/17/68]

- (1) This section applies in relation to a person who commits acts outside the Island at a time when he is not a United Kingdom national, a Manx resident or a person subject to UK service jurisdiction and who subsequently becomes resident in the Island.
- (2) Proceedings may be brought against such a person in the Island for a substantive offence under this Part if —
- (a) he is resident in the Island 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 the Island.
- (3) Proceedings may be brought against such a person in the Island for an offence ancillary to a substantive offence under this Part (or what would be such a substantive offence if committed in the Island) if —
- (a) he is resident in the Island 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 the Island.
- (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.

### 53 Interpretation of Part 5: general

[P2001/17/55, 67 and 69]

- (1) In this Part —

“**act**”, except where the context otherwise requires, includes an omission, and references to conduct have a corresponding meaning;

“**Manx resident**” means a person who is resident in the Island;

“**Manx ship**” has the same meaning as in the *Merchant Shipping Registration Act 1991*;

“**person subject to UK service jurisdiction**” means —

- (a) a person subject to military law, air force law or the Naval Discipline Act 1957 (an Act of Parliament);
- (b) any such person as is mentioned in section 208A or 209(1) or (2) of the Army Act 1955 or the Air Force Act 1955 (Acts of Parliament) (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 (an Act of Parliament) (application of Act to passengers in HM ships and to certain civilians);

“**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 (an Act of Parliament) is a British subject, or
- (c) a British protected person within the meaning of that Act.

- (2) References in this Part to an ancillary offence 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.

**53A Supplemental provisions about Manx residents**

[P2001/17/67A and P2009/25/70(4)]

- (1) To the extent that it would not otherwise be the case, the following individuals are to be treated for the purposes of this Part as being Manx residents —
  - (a) an individual who has indefinite leave to remain in the Island;
  - (b) any other individual who has made an application for such leave (whether or not it has been determined) and who is in the Island;
  - (c) an individual who has leave to enter or remain in the Island for the purposes of work or study and who is in the Island;
  - (d) an individual who has made an asylum claim, or a human rights claim, which has been granted;
  - (e) any other individual who has made an asylum claim or human rights claim (whether or not the claim has been determined) and who is in the Island;
  - (f) an individual named in an application for indefinite leave to remain, an asylum claim or a human rights claim as a dependant of the individual making the application or claim if —
    - (i) the application or claim has been granted, or
    - (ii) the named individual is in the Island (whether or not the application or claim has been determined);
  - (g) an individual who would be liable to removal or deportation from the Island but cannot be removed or deported because of section 6 of the *Human Rights Act 2001* or for practical reasons;
  - (h) an individual —
    - (i) in relation to whom a decision has been made that he or she should be the subject of a deportation order under section 5(1) of the Immigration Act 1971 by virtue of section 3(5)(a) of that Act (deportation conducive to the public good);
    - (ii) who has appealed against the decision to make the order (whether or not the appeal has been determined), and
    - (iii) who is in the Island.
  - (i) an individual who is an illegal entrant within the meaning of section 33(1) of the Immigration Act 1971 or who is liable to removal under section 10 of the Immigration and Asylum Act 1999;
  - (j) an individual detained in lawful custody in the Island.
- (2) When determining for the purposes of this Part whether any other individual is resident in the Island regard is to be had to all relevant considerations including —

- (a) the periods during which the individual has been or intends to be in the Island,
- (b) the purposes for which the individual is, has been or intends to be in the Island,
- (c) whether the individual has family or other connections to the Island and the nature of those connections, and
- (d) whether the individual has an interest in residential property located in the Island.

(3) In this section —

“asylum claim” means —

- (a) a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the Island, or
- (b) a claim that the claimant would face a real risk of serious harm if removed from the Island;

“Convention rights” has the meaning given by section 1 of the *Human Rights Act 2001*;

“detained in lawful custody” means —

- (a) detained in pursuance of a sentence of custody;
- (b) remanded in or committed to custody by an order of a court;
- (c) detained pursuant to an order under section 2 of the Colonial Prisoners Removal Act 1884 (of Parliament);<sup>9</sup>
- (d) detained pursuant to a warrant under section 1 or 4A of the Repatriation of Prisoners Act 1984 (of Parliament) as that Act applies in the Island by virtue of the Repatriation of Prisoners Act 1984 (Isle of Man) Order 2001;
- (e) detained under Part 3 of the *Mental Health Act 1998* or by virtue of an order under section 54(1)(a) or 54A of the *Criminal Jurisdiction Act 1993* (orders relating to mentally disordered persons, etc);

“human rights claim” means a claim that to remove the claimant from, or to require the claimant to leave, the Island would be unlawful under section 6 of the *Human Rights Act 2001* (public authority not to act contrary to Convention) as being incompatible with the person’s Convention rights;

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

“serious harm” has the meaning given by article 15 of Council Directive 2004/83/EC of the European Community on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;<sup>10</sup>

and a reference to having leave to enter or remain in the Island is to be construed in accordance with the Immigration Act 1971.

- (4) Reference in this section to the Immigration Act 1971 or to the Immigration Asylum Act 1999 are references to those Acts of Parliament as they apply in the Island by virtue of the Immigration (Isle of Man) Order 2008.<sup>11</sup>
- (5) This section applies in relation to any offence under this Part (whether committed before or after the coming into force of this section).<sup>12</sup>

## PART 6 – GENERAL PROVISIONS

### 54 Application of provisions in relation to other International Tribunals

[P2001/17/77: SI 1997/282]

- (1) Section 20 applies in relation to proceedings under the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Isle of Man) Order 1997, as it applies in relation to proceedings under Part 2, with the following adaptations –
  - (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)”.
- (2) Sections 39 to 42 apply, with any necessary modifications, in relation to a sentence of imprisonment imposed by either of the International Tribunals to which that Order applies as they apply in relation to a sentence of the ICC.

### 55 Application to the Crown

[P2001/17/78]

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.

### 56 References to UK Ministers

- (1) The Council of Ministers may by order provide that any reference in this Act to the Secretary of State shall be read as, or as including, a reference to the holder of any other office in Her Majesty’s government in the United Kingdom.



- (2) An order under subsection (1) shall not have effect unless it is approved by Tynwald.

## 57 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 53
ancillary offence (in Part 5)	section 53
article	section 1(2)
crime against humanity (in Part 5)	section 44(1)
defendant (in Part 2)	section 23
delivery order (in Part 2)	section 23
the Department (in Parts 2 and 4)	sections 23 and 39(6)
genocide (in Part 5)	section 44(1)
the ICC	section 1(1)
ICC crime	section 1(1)
the ICC Statute	section 1(1)
Manx resident (in Part 5)	section 53
Manx ship (in Part 5)	section 53
person subject to UK service jurisdiction (in Part 5)	section 53
provisional warrant (in Part 2)	section 23
section 2 warrant (in Part 2)	section 23
United Kingdom national (in Part 5)	section 53
war crime (in Part 5)	section 44(1)

## 58 Repeal of Genocide (Isle of Man) Act 1969

The *Genocide (Isle of Man) Act 1969* is repealed.

## 59 Short title and commencement

- (1) This Act may be cited as the International Criminal Court Act 2003.
- (2) This Act shall come into operation on such day as the Council of Ministers may by order appoint.<sup>13</sup>



**SCHEDULE 1****SUPPLEMENTARY PROVISIONS RELATING TO THE ICC**

## Section 1(3)

*Legal capacity, privileges and immunities*

1. (1) The Council of Ministers may by order confer on the ICC the legal capacities of a body corporate.
- (2) The Council of Ministers may by order provide that —
  - (a) the ICC,
  - (b) the judges, the Prosecutor, the Deputy Prosecutors and the Registrar, and members of their families who form part of their households,<sup>14</sup>
  - (c) the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry,
  - (d) counsel, experts, witnesses and other persons involved in proceedings of the ICC, and
  - (e) persons attending meetings of the Assembly (including persons attending such meetings as observers and persons invited to such meetings),<sup>15</sup>

shall have such privileges and immunities as, in the opinion of the Council of Ministers, 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 and which extends or will extend to the Island.

- (3) In sub-paragraph (2)(e) "the Assembly" means the Assembly of States Parties to the ICC Statute (and includes the subsidiary organs of that Assembly).<sup>16</sup>

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

2. The Council of Ministers may by order make such provision as appears to it 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 and which extends to the Island.

*Tynwald approval of orders*

3. No order under paragraph 1 or 2 shall have effect unless it is approved by Tynwald.

*Proof of orders, etc. of the ICC*

4. (1) 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.

(2) 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*

5. (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.

*Certified copies of documents*

6. For the purposes of this Part a copy of an order, judgment, warrant, request, certificate or other document referred to in paragraph 4 or 5 which is certified by or on

behalf of the Secretary of State as a true copy shall be treated as if it were the original document.

## SCHEDULE 2

### DELIVERY UP OF PERSONS SUBJECT TO CRIMINAL PROCEEDINGS, ETC

#### Section 21

#### PART 1 – CRIMINAL PROCEEDINGS

##### *Meaning of “criminal proceedings”*

1. In this Part “**criminal proceedings**” means proceedings before a court in the Island —

- (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*

2. (1) This paragraph applies where —

- (a) the Attorney General 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.

(2) The Attorney General shall inform the court of the request, and 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) Where a delivery order is made and the criminal proceedings are still pending or in progress, the Attorney General —

- (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 Attorney General gives a direction under sub-paragraph (3), 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.

*Effect on custodial sentences*

3. (1) Where in pursuance of Part 2 a person who is a detainee is delivered up —
- (a) into the custody of the ICC, or
  - (b) into the custody of a state (including the United Kingdom) where he is to undergo imprisonment under a sentence of the ICC,

he shall continue to be liable to complete any term of custody to which he had been sentenced by a court in the Island, 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 any state.

(2) Where in pursuance of Part 2 of this Act a court orders the discharge of a person who is a detainee, the discharge is without prejudice to the liability of that person to complete any term of custody to which he has been sentenced by a court in the Island.

Accordingly, a detainee 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 detainee, the order may include provision authorising the return of the detainee into the custody of the Department —

- (a) in accordance with arrangements made by the Department with the ICC, or
- (b) in the case of a detainee taken to a place where he is to undergo imprisonment under a sentence of the ICC, in accordance with arrangements made by the Department with the state where that place is situated,

and for his transfer in custody to the institution where he is liable to be detained under the sentence of the court in the Island to which he is subject.

(4) In this paragraph “detainee” means a person serving a sentence in an institution within the meaning of the *Custody Act 1995*.

*Power to suspend or revoke other orders*

4. (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 custody) has been made in criminal proceedings before a court in the Island.

(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”*

[SI 1965/1875]

5. In this Part “**extradition proceedings**” means proceedings before a court in the Island under —

- (a) the Extradition Act 1989 (an Act of Parliament), or
- (b) the Backing of Warrants (Republic of Ireland) Act 1965 (an Act of Parliament), as it has effect in the Island.

### *Extradition proceedings*

6. (1) Where —

- (a) the Attorney General receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person,
- (b) extradition proceedings against that person are pending or in progress before a court in the Island,

the Attorney General 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) Where a delivery order is made and the extradition proceedings are still pending or in progress, the Attorney General —

- (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 Attorney General gives a direction under sub-paragraph (3)(b), the court before which the extradition 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.

### *Power to suspend or revoke warrant or order*

7. (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 (an Act of Parliament), or

- (b) who has been ordered to be delivered up under section 2(1) of the Backing of Warrants (Republic of Ireland) Act 1965 (an Act of Parliament), as it has effect in the Island,

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”*

[SI 1997/282]

8. In this Part “**other delivery proceedings**” means proceedings before a court in the Island for a delivery order under the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Isle of Man) Order 1997, and “**the relevant International Tribunal**”, in relation to such proceedings, means such one of the international tribunals to which that Order relates as is relevant to those proceedings.

#### *Delivery proceedings*

9. (1) Where —
- (a) the Attorney General receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person,
  - (b) other delivery proceedings against that person are pending or in progress before a court in the Island,

the Attorney General shall consult the ICC and the relevant International Tribunal.

- (2) The Attorney General 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.

- (4) Where a delivery order is made under Part 2 of this Act and the other delivery proceedings are still pending or in progress, the Attorney General —

- (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 Attorney General gives a direction under sub-paragraph (4)(b), the court before which the other delivery proceedings are pending or in progress shall —

- (a) order their discontinuance, and



- (b) make any other order necessary to enable the delivery order under Part 2 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.

*Power to suspend or revoke previous delivery order*

10. (1) Where a court makes a delivery order in respect of a person in respect of whom a delivery order has been made under the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Isle of Man) Order 1997, the court may make any order necessary to enable the person to be delivered up under Part 2 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**

Section 25(3)

*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

#### Section 31(1)

##### *Nomination of court to supervise taking of evidence*

1. Where the Attorney General —
  - (a) receives a request from the ICC for assistance in obtaining evidence as to the identity of a person,
  - (b) is satisfied that other means of identification have been tried and have proved inconclusive, and
  - (c) has notified the ICC of that fact,and the ICC has signified that it wishes to proceed with the request, he shall nominate a court in the Island to supervise the taking of the person's fingerprints or a non-intimate sample (or both).

##### *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 69 of the 1998 Act, and
    - (b) section 67(2) of that Act 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 7 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 custody 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 69 of the 1998 Act.
- (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 the Chief Constable, take the necessary identification evidence without consent.
- (2) The Chief Constable 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 together with the material obtained under this Schedule to the Attorney General for transmission to the ICC.

*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 section 67(1) of the 1998 Act (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 subparagraph (2), against —
- (a) other fingerprints or samples taken under this Schedule or information derived from such samples, and
  - (b) any of the fingerprints, samples and information mentioned in the said section 67(1).
- (5) For the purposes of this paragraph a “relevant offence” means an ICC crime or an offence under Part 5.
- (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 68 of the 1998 Act (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 the Island.

#### *Interpretation*

9. In this Schedule “**the 1998 Act**” means the *Police Powers and Procedures Act 1998*.

**SCHEDULE 5****INVESTIGATION OF PROCEEDS OF ICC CRIME**

## Section 34

**PART 1 - PRODUCTION OR ACCESS ORDERS***Application for order*

1. (1) An order under this Part may be made by a judge of the High Court on an application made by the Attorney General under section 34(1).
- (2) Any such application 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 7 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 order or access order is made by virtue of paragraph 4, 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 order 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 order 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 order 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 that —

(a) 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) 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).

(5) In this paragraph “specified” means specified in the order.

*Effect of order: general*

5. (1) An order under this Part has effect as if it were an order of the High Court.

(2) Provision may be made by rules of court as to —

(a) the revocation 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.

(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 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 24 and 25 of the *Police Powers and Procedures Act 1998* (access to, and copying and retention of, seized material) material produced in pursuance of an order under this Part shall be treated as if it were material seized by a constable.

*Order in relation to material in possession of Department etc*

7. (1) An order under this Part may be made in relation to material in the possession, custody or power of a Department or Statutory Board or of an office of the Government.

(2) An order so made —

- (a) shall be served as if the proceedings were civil proceedings against the Department or Statutory Board or the chief officer of the office, and
- (b) may require any officer of the Department, Statutory Board or office, 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.

**PART 2 – SEARCH WARRANTS***Application for warrant*

8. A search warrant may be issued under this Part by a judge of the High Court on an application made in pursuance of a direction under section 34(1).



*Effect of warrant*

9. (1) A search warrant issued under this Part 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 in the following cases.
- (2) The first case is where the judge is satisfied that a production order 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 order 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 order 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 an officer within the meaning of the *Customs and Excise Management Act 1986*; and
- “**items subject to legal privilege**” and “**premises**” have the same meanings as in the *Police Powers and Procedures Act 1998*.

## SCHEDULE 6

### FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

#### Section 35

##### *Application for freezing order*

1. (1) A freezing order may be made by the High Court on an application under section 35.
- (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 revocation of order*

4. (1) A freezing order may be varied or revoked in relation to any property on the application of any person affected by the order.

(2) A freezing order shall be revoked 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 Island, seize the property.

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

*Registered land*

7. (1) The ICC shall be treated for the purposes of section 61 of the *Land Registration Act 1982* (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 General 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.<sup>17</sup>

(3) Subsections (2) and (4) of section 62 of the *Land Registration Act 1982* (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 1982*, an order under paragraph 4 revoking the freezing order may direct that the entry be vacated.

*Unregistered land*

8. Where a freezing order has been registered and recorded under section 22 of the *Registration of Deeds Act 1961*, an order under paragraph 4 revoking the freezing order may direct that the record be marked in accordance with section 22(4) of that Act.

*Bankruptcy*

9. (1) Where a person is adjudged bankrupt —

- (a) property for the time being subject to a freezing order made before he was adjudged 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 property of the bankrupt for the purposes of the Bankruptcy Code 1892 (“the Code”).

(2) Where a person has been adjudged bankrupt, the powers conferred on a receiver appointed under paragraph 5 shall not be exercised in relation to property for the time being comprised in the property of the bankrupt for the purposes of the Code.

(3) Nothing in the Code shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Where, in the case of a debtor, an official trustee is appointed interim receiver under section 8 of the Code and any property of the debtor is subject to a freezing order, the powers conferred on the receiver by virtue of the Code do not apply to property for the time being subject to the freezing order.

### *Winding up*

10. (1) Where an order for the winding up of a company has been made under the *Companies Act 1931*, 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) 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 *Companies Act 1931* 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 *Companies Act 1931*; 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.

*Protection of trustees etc*

11. (1) This paragraph applies where a trustee in bankruptcy, interim receiver, liquidator or provisional liquidator 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 trustee in bankruptcy, interim receiver, liquidator or provisional liquidator 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 trustee in bankruptcy, interim receiver, liquidator or provisional liquidator 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 bankruptcy or winding up 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 the bankruptcy or winding up.

(4) Sub-paragraphs (1) to (3) are without prejudice to the generality of any provision contained in the *Bankruptcy Code 1892* or the *Companies Act 1931*.

*Interpretation*

12. (1) For the purposes of this Schedule —

- (a) “**property**” includes money and all other property, real or personal, 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 the Island.

(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

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

#### Section 44(8)

#### *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. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (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*

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such 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, 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;
  - (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
  - (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 sterilization, 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 recognized 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.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

### *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 8**

### **OFFENCES AGAINST THE ICC: ARTICLE 70**

#### Section 48(6)

#### *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.”





## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

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<sup>1</sup> See General Note.

<sup>2</sup> Subs (2) amended by Criminal Justice, Police Powers and Other Amendments Act 2014 Sch 3.

<sup>3</sup> Subs (5) added by Organised and International Crime Act 2010 s 13.

<sup>4</sup> Para (b) amended by Fines and Penalties Act 2024 Sch 5.

<sup>5</sup> Para (ab) inserted by Sexual Offences and Obscene Publications Act 2021 Sch 5.

<sup>6</sup> S 50A inserted by Organised and International Crime Act 2010 s 14.

<sup>7</sup> SI1970/1677, SI1999/1743

<sup>8</sup> S 50B inserted by Organised and International Crime Act 2010 s 14.

<sup>9</sup> SI2001/3936

<sup>10</sup> OJ2004L304 p.2 of 30.9.2004

<sup>11</sup> SI2008/680

<sup>12</sup> S 53A inserted by Organised and International Crime Act 2010 s 15.

<sup>13</sup> ADO (whole Act) 1/4/2004 (SD64/04).

<sup>14</sup> Item (b) amended by Organised and International Crime Act 2010 s 16(2).

<sup>15</sup> Item (e) added by Organised and International Crime Act 2010 s 16(2).

<sup>16</sup> Subpara (3) added by Organised and International Crime Act 2010 s 16(3).

<sup>17</sup> Subpara (2) amended by Central registry Act 2018 Sch.