



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 2

### CRIMINAL LAW

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

#### **33 Genocide, crimes against humanity and war crimes: retrospective application**

After section 9 of the International Criminal Court (Scotland) Act 2001 (asp 13) insert—

##### **“9A Retrospective application of certain offences**

- (1) Section 1 of this Act applies to acts committed on or after 1 January 1991.
- (2) But that section does not apply to an act committed before 17 December 2001 which constitutes a crime against humanity or a war crime within article 8.2(b) or (e) unless, at the time the act was committed, it amounted in the circumstances to a criminal offence under international law.
- (3) Section 2 of this Act applies to conduct engaged in on or after 1 January 1991.
- (4) The references in subsections (1), (3) and (5) of that section to an offence include an act or conduct that would not constitute an offence but for this section.
- (5) Any enactment or rule of law relating to an offence ancillary to a relevant offence applies—
  - (a) to conduct engaged in on or after 1 January 1991, and
  - (b) even if the act or conduct constituting the relevant offence would not constitute such an offence but for this section.
- (6) But section 2 of this Act, and any enactment or rule of law relating to an offence ancillary to a relevant offence, do not apply to—

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*Status: This is the original version (as it was originally enacted).*

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- (a) conduct engaged in before 17 December 2001, or
  - (b) conduct engaged in on or after that date which was ancillary to an act or conduct that—
    - (i) was committed or engaged in before that date, and
    - (ii) would not constitute a relevant offence but for this section,unless, at the time the conduct was engaged in, it amounted in the circumstances to a criminal offence under international law.
- (7) Section 5 of this Act, so far as it has effect in relation to relevant offences, applies—
- (a) to failures to exercise control of the kind mentioned in subsection (2) or (3) of that section which occurred on or after 1 January 1991, and
  - (b) even if the act or conduct constituting the relevant offence would not constitute an offence but for this section.
- (8) But section 5 of this Act, so far as it has effect in relation to relevant offences, does not apply to a failure to exercise control of the kind mentioned in subsection (2) or (3) of that section which occurred before 17 December 2001 unless, at the time it occurred, it amounted in the circumstances to a criminal offence under international law.
- (9) In this section, “relevant offence” means an offence under section 1 or 2 of this Act or an offence ancillary to such an offence.

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

- (1) This section applies in relation to—
- (a) an offence under section 1 of this Act on account of an act committed before 17 December 2001 constituting genocide, if at the time the act was committed it also amounted to an offence under section 1 of the Genocide Act 1969,
  - (b) an offence under section 1 of this Act on account of an act committed before 1 September 2001 constituting a war crime, if at the time the act was committed it also amounted to an offence under section 1 of the Geneva Conventions Act 1957 (c.52) (grave breaches of the Conventions),
  - (c) an offence ancillary to an offence within paragraph (a) or (b) above.
- (2) Section 3(5) of this Act has effect in relation to such an offence as if for “30 years” there were substituted “14 years”.