

INTERNATIONAL CRIMINAL COURT ACT 2001

EXPLANATORY NOTES

BACKGROUND

3. Following several years of negotiation, the inter-governmental treaty which forms the Rome Statute of the International Criminal Court (“ICC Statute”) was adopted on 17 July 1998. (The ICC Statute has been published as Cm 4555.) Once the Statute has been ratified by 60 States, the ICC will itself be created. The Foreign Secretary announced in the House of Commons on 20 July 1998 that the Government intended to introduce legislation to enable the UK to ratify the Statute and wished to be among the Court’s founding members. The UK signed the Statute on 30 November 1998 and this Act is intended, together with corresponding legislation in the Scottish Parliament, to enable the UK to comply with all its obligations under the Statute and accordingly to ratify.
4. The International Criminal Court (“ICC”) will be a permanent Court, situated in The Hague, to try individuals for genocide, crimes against humanity and war crimes. The ICC will be able to investigate crimes committed by nationals, or on the territory, of States Parties, or of non-State Parties who have given consent. It will also have jurisdiction over crimes, wherever committed, which are referred to the ICC by the United Nations Security Council. The ICC will have 18 judges and its own Prosecutor. The ICC will work with the assistance of States; States Parties are obliged to co-operate with the ICC, including by gathering evidence and arresting suspects.
5. The ICC will be “complementary” to national courts: relevant States will retain jurisdiction unless they are unable or unwilling genuinely to investigate and prosecute a crime. A situation may be referred to the ICC by the Security Council; alternatively a State Party can refer a situation to the Prosecutor or the Prosecutor can initiate an investigation on his own motion. In the latter two cases, if the Prosecutor has determined that there is a reasonable basis to commence an investigation, he must inform all States Parties and those States which would normally exercise jurisdiction over the alleged crime. Within one month, a State may inform the ICC that it is investigating, or has investigated, the alleged crimes. The Prosecutor must defer to the State’s investigation unless the ICC determines that the State is unwilling or unable genuinely to carry out the investigation or prosecution. The definitions of unwillingness and inability are set out in Article 17 of the Statute.
6. The principal aims of the Act are:
 - to incorporate the offences in the Statute into domestic law so that domestic authorities will always be in a position to investigate and prosecute any ICC crimes committed in this country, or committed overseas by a UK national, a UK resident or a person subject to UK Service jurisdiction;
 - to make provision, where necessary, to enable the UK to meet its obligations under the ICC Statute and so to enable ratification of that Statute. These obligations relate, in particular, to the arrest and surrender of persons wanted by the ICC and the provision of assistance with respect to ICC investigations;

*These notes refer to the International Criminal Court Act
2001 (c.17) which received Royal Assent on 11 May 2001*

- to enable the UK to reach an agreement with the ICC so that persons convicted can serve prison sentences in this country.
7. The Act extends to England and Wales, and Northern Ireland. Many provisions of the Act also extend to Scotland, either because they deal with reserved matters under the Scotland Act 1998 or because the Scottish Parliament has agreed that certain matters, although devolved, are more conveniently dealt with on a UK-wide basis in this Act. A separate International Criminal Court (Scotland) Bill has been introduced in the Scottish Parliament to deal with the other issues which fall within that Parliament's competence.