



International Criminal Court Act 2001

2001 CHAPTER 17

PART 5

OFFENCES UNDER DOMESTIC LAW

Supplementary provisions

65 Responsibility of commanders and other superiors

- (1) This section applies in relation to—
 - (a) offences under this Part, and
 - (b) offences ancillary to such offences.
- (2) A military commander, or a person effectively acting as a military commander, is responsible for offences committed by forces under his effective command and control, or (as the case may be) his effective authority and control, as a result of his failure to exercise control properly over such forces where—
 - (a) he either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences, and
 - (b) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (3) With respect to superior and subordinate relationships not described in subsection (2), a superior is responsible for offences committed by subordinates under his effective authority and control, as a result of his failure to exercise control properly over such subordinates where—
 - (a) he either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offences,
 - (b) the offences concerned activities that were within his effective responsibility and control, and

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- (c) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (4) A person responsible under this section for an offence is regarded as aiding, abetting, counselling or procuring the commission of the offence.
- (5) In interpreting and applying the provisions of this section (which corresponds to article 28) the court shall take into account any relevant judgment or decision of the ICC.
 Account may also be taken of any other relevant international jurisprudence.
- (6) Nothing in this section shall be read as restricting or excluding—
 - (a) any liability of the commander or superior apart from this section, or
 - (b) the liability of persons other than the commander or superior.

[^{F1}65A Retrospective application of certain offences

- (1) Sections 51 and 58 apply to acts committed on or after 1 January 1991.
- (2) But those sections do not apply to a crime against humanity, or a war crime within article 8.2(b) or (e), committed by a person before 1 September 2001 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 52 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 England and Wales but for this section.
- (4) Section 59 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 Northern Ireland but for this section.
- (5) 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.
- (6) But sections 52 and 59, 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 September 2001, or
 - (b) conduct in which the person 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 52(2) or 59(2), but for this section,
 unless, at the time the person engaged in the conduct, it amounted in the circumstances to a criminal offence under international law.
- (7) Section 65, so far as it has effect in relation to relevant Part 5 offences—

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- (a) applies to failures to exercise control of the kind mentioned in section 65(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.
- (8) But section 65, 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 65(2) or (3) which occurred before 1 September 2001 unless, at the time the failure occurred, it amounted in the circumstances to a criminal offence under international law.
- (9) In this section “relevant Part 5 offence” means an offence under section 51, 52, 58 or 59 or an offence ancillary to such an offence.

Textual Amendments

- F1** Ss. 65A, 65B inserted (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), [ss. 70\(3\)](#), [182\(5\)](#) (with [s. 180](#), [Sch. 22](#)); [S.I. 2010/816](#), [art. 2](#), [Sch. para. 3](#)

65B Modification of penalties: provision supplemental to section 65A

- (1) In the case of a pre-existing E&W offence committed before 1 September 2001, in section 53(6) “30 years” is to be read as “14 years”.
- (2) In the case of an offence of the kind mentioned in section 55(1)(d) which is ancillary to a pre-existing E&W offence committed before 1 September 2001, nothing in section 53(5) and (6) disapplies the penalties provided for in sections 4 and 5 of the Criminal Law Act 1967.
- (3) In the case of a pre-existing NI offence committed before 1 September 2001, in section 60(6) “30 years” is to be read as “14 years”.
- (4) In the case of an offence of the kind mentioned in section 62(1)(d) which is ancillary to a pre-existing NI offence committed before 1 September 2001, nothing in section 60(5) and (6) disapplies the penalties provided for in sections 4 and 5 of the Criminal Law Act (Northern Ireland) 1967.
- (5) In this section—
 - “pre-existing E&W offence” means—
 - (a) an offence under section 51 on account of an act 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 51 on account of an act 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 (grave breaches of the Conventions);
 - (c) an offence of a kind mentioned in section 55(1)(a) to (c) which is ancillary to an offence within paragraph (a) or (b) above;
 - “pre-existing NI offence” means—
 - (a) an offence under section 58 on account of an act constituting genocide, if at the time the act was committed it also amounted to an offence under section 1 of the Genocide Act 1969;

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- (b) an offence under section 58 on account of an act 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 (grave breaches of the Conventions);
- (c) an offence of a kind mentioned in section 62(1)(a) to (c) which is ancillary to an offence within paragraph (a) or (b) above.]

Textual Amendments

F1 Ss. 65A, 65B inserted (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), **ss. 70(3), 182(5)** (with s. 180, Sch. 22); [S.I. 2010/816](#), art. 2, Sch. para. 3

66 Mental element

- (1) References in this Part to a person committing—
 - (a) genocide,
 - (b) a crime against humanity,
 - (c) a war crime, or
 - (d) any of the acts mentioned in article 70.1 (offences against the administration of justice in relation to the ICC),
 shall be construed in accordance with this section.
- (2) Unless otherwise provided by—
 - (a) the articles mentioned in the definition in section 50(1) of the crimes specified in subsection (1)(a) to (c) above, or any relevant Elements of Crimes (see section 50(2)),
 - (b) section 54(1) or 61(1) or article 70.1 (offences in relation to the ICC), or
 - (c) section 65 (responsibility of commanders and other superiors),
 a person is regarded as committing such an act or crime only if the material elements are committed with intent and knowledge.
- (3) For this purpose—
 - (a) a person has intent—
 - (i) in relation to conduct, where he means to engage in the conduct, and
 - (ii) in relation to a consequence, where he means to cause the consequence or is aware that it will occur in the ordinary course of events; and
 - (b) “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.
- (4) In interpreting and applying the provisions of this section (which corresponds to article 30) the court shall take into account any relevant judgment or decision of the ICC.
 Account may also be taken of any other relevant international jurisprudence.

67 Meaning of “UK national”, “UK resident” and “person subject to UK service jurisdiction”

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

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- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas Citizen,
 - (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject, or
 - (c) a British protected person within the meaning of that Act.
- (2) In this Part a “United Kingdom resident” means a person who is resident in the United Kingdom.
- (3) In this Part a “person subject to UK service jurisdiction” means—
[^{F2}a person subject to service law, or a civilian subject to service discipline, within the meaning of the Armed Forces Act 2006.]

Textual Amendments

F2 Words in s. 67(3) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 189](#); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4

[^{F3}67A Supplemental provision about UK residents

- (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 resident in the United Kingdom—
- (a) an individual who has indefinite leave to remain in the United Kingdom;
 - (b) any other individual who has made an application for such leave (whether or not it has been determined) and who is in the United Kingdom;
 - (c) an individual who has leave to enter or remain in the United Kingdom for the purposes of work or study and who is in the United Kingdom;
 - (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 United Kingdom;
 - (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 United Kingdom (whether or not the application or claim has been determined);
 - (g) an individual who would be liable to removal or deportation from the United Kingdom but cannot be removed or deported because of section 6 of the Human Rights Act 1998 or for practical reasons;
 - (h) an individual—
 - (i) against whom a decision to make 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) has been made,
 - (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 United Kingdom;

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- (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 who is detained in lawful custody in the United Kingdom.
- (2) When determining for the purposes of this Part whether any other individual is resident in the United Kingdom 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 United Kingdom,
 - (b) the purposes for which the individual is, has been or intends to be in the United Kingdom,
 - (c) whether the individual has family or other connections to the United Kingdom and the nature of those connections, and
 - (d) whether the individual has an interest in residential property located in the United Kingdom.
- (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 United Kingdom, or
 - (b) a claim that the claimant would face a real risk of serious harm if removed from the United Kingdom;
- “Convention rights” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998;
- “detained in lawful custody” means—
- (a) detained in pursuance of a sentence of imprisonment, detention or custody for life or a detention and training order,
 - (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 or a warrant under section 1 or 4A of the Repatriation of Prisoners Act 1984,
 - (d) detained under Part 3 of the Mental Health Act 1983 or by virtue of an order under section 5 of the Criminal Procedure (Insanity) Act 1964 or section 6 or 14 of the Criminal Appeal Act 1968 (hospital orders, etc),
 - (e) detained by virtue of an order under Part 6 of the Criminal Procedure (Scotland) Act 1995 (other than an order under section 60C) or a hospital direction under section 59A of that Act, and includes detention by virtue of the special restrictions set out in Part 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 to which a person is subject by virtue of an order under section 59 of the Criminal Procedure (Scotland) Act 1995, or
 - (f) detained under Part 3 of the Mental Health (Northern Ireland) Order 1986 or by virtue of an order under section 11 or 13(5A) of the Criminal Appeal (Northern Ireland) Act 1980;
- “human rights claim” means a claim that to remove the claimant from, or to require the claimant to leave, the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Convention) as being incompatible with the person's Convention rights;

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“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](#) 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;

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

- (4) This section applies in relation to any offence under this Part (whether committed before or after the coming into force of this section).]

Textual Amendments

F3 S. 67A inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), ss. 70(4), 182(5) (with s. 180, Sch. 22); S.I. 2010/816, art. 2, Sch. para. 3

68 Proceedings against persons becoming resident within the jurisdiction

- (1) This section applies in relation to a person who commits acts outside the United Kingdom at a time when he is not a United Kingdom national, a United Kingdom resident or a person subject to UK service jurisdiction and who subsequently becomes resident in the United Kingdom.
- (2) Proceedings may be brought against such a person in England and Wales or Northern Ireland for a substantive offence under this Part if—
- he is resident in the United Kingdom at the time the proceedings are brought, and
 - the acts in respect of which the proceedings are brought would have constituted that offence if they had been committed in that part of the United Kingdom.
- (3) Proceedings may be brought against such a person in England and Wales or Northern Ireland for an offence ancillary to a substantive offence under this Part (or what would be such a substantive offence if committed in that part of the United Kingdom) if—
- he is resident in the United Kingdom at the time the proceedings are brought, and
 - the acts in respect of which the proceedings are brought would have constituted that offence if they had been committed in that part of the United Kingdom.
- (4) In this section a “substantive offence” means an offence other than an ancillary offence.
- (5) Nothing in this section shall be read as restricting the operation of any other provision of this Part.

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Modifications etc. (not altering text)

- C1** S. 68(1) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), art. 1(3), **Sch. 1 para. 48(2)**

69 References to acts to include omissions, etc

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

Status:

Point in time view as at 06/04/2010.

Changes to legislation:

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