

---

STATUTORY INSTRUMENTS

---

**2009 No. 1738**

**INTERNATIONAL CRIMINAL COURT**

**The International Criminal Court Act  
2001 (Overseas Territories) Order 2009**

*Made* - - - - - *8th July 2009*  
*Laid before Parliament* *15th July 2009*  
*Coming into force* - - - *1st September 2009*

At the Court at Buckingham Palace, the 8th day of July 2009

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 79(3) of the International Criminal Court Act 2001(1), is pleased, by and with the advice of Her Privy Council, to order, as follows:

**Citation and commencement**

1. This Order may be cited as the International Criminal Court Act 2001 (Overseas Territories) Order 2009 and shall come into force on 1 September 2009.

**Extent and interpretation**

2.—(1) The provisions of the International Criminal Court Act 2001, with the exceptions, adaptations and modifications as in Annex 1 to this Order, shall extend to the territories listed in Annex 2 to this Order.

(2) The provisions of the International Criminal Court Act 2001, as so excepted, adapted and modified, shall in their application to certain of the said territories be subject to the further exceptions, adaptations and modifications set out in Annex 3 to this Order.

## **Interpretation**

3.—(1) Except as otherwise provided, in the application of the International Criminal Court Act 2001 to any of the territories to which it is extended, the expression “the Territory” means that territory.

(2) In this Order, unless the contrary intention appears—

“the Attorney General” means the Attorney General of the Territory and includes any person for the time being lawfully performing the functions of the Attorney General;

“appellate court” means the court or courts of the Territory, however styled, which possess appellate jurisdiction from decisions of the Supreme Court;

“constable” includes an officer of the police force or police service of the Territory;

“customs officer” means an officer who, under the law of the Territory relating to the control of exports or imports, is authorised to enforce such controls;

“the Governor” means the Governor or other officer administering the Government of the Territory;

“official gazette” includes any form in which official information is normally made available in the Territory;

“Supreme Court” means the court of the Territory, however styled, which possesses unlimited original jurisdiction in civil and criminal matters (but does not include a court which has appellate jurisdiction from such a court).

(3) Where a request is made by the International Criminal Court to the Secretary of State and is transmitted by him to the Governor, any references in this Order to a request made by the Court to the Governor shall be treated as including references to a request so made to the Secretary of State and so transmitted to the Governor.

## **Exercise of powers of the Governor**

4. The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate, or authorise the delegation of, any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

*Judith Simpson*  
Clerk of the Privy Council

ANNEX 1

Article 2(1)

EXTENSION OF THE PROVISIONS OF THE INTERNATIONAL  
CRIMINAL COURT ACT 2001, WITH EXCEPTIONS, ADAPTATIONS  
AND MODIFICATIONS, TO THE TERRITORIES LISTED IN ANNEX 2

PART 1

THE INTERNATIONAL CRIMINAL COURT

**The ICC and the ICC Statute**

5.—(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 to this Act contains supplementary provisions relating to the ICC.

PART 2

ARREST AND DELIVERY OF PERSONS

*Proceedings on request*

**Request for arrest and surrender**

6.—(1) Where the Governor receives a request from the ICC for the arrest and surrender of a person alleged to have committed an ICC crime, or to have been convicted by the ICC, he shall transmit the request and the documents accompanying it to an appropriate judicial officer.

(2) Omitted

(3) If the request is accompanied by a warrant of arrest and the appropriate judicial officer is satisfied that the warrant appears to have been issued by the ICC, he shall endorse the warrant for execution in the Territory.

(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 person sought is the one referred to in the judgment of conviction, and

(c) where the person sought 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 officer shall issue a warrant for the arrest of the person to whom the request relates.

(5) In this Part a warrant endorsed or issued under this section is referred to as a “section 2 warrant”.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

### **Request for provisional arrest**

7.—(1) This section applies where the Governor receives from the ICC a request for the provisional arrest of a person alleged to have committed an ICC crime or to have been convicted by the ICC.

- (2) If it appears to the Governor that application for a warrant should be made in the Territory—
- (a) he shall transmit the request to a constable and direct the constable to apply for a warrant for the arrest of that person, and
  - (b) on an application by a constable stating on oath that he has reason to believe—
    - (i) that a request has been made on grounds of urgency by the ICC for the arrest of a person, and
    - (ii) that the person is in, or on his way to, the Territory,

an appropriate judicial officer shall issue a warrant for the arrest of that person.

(3) Omitted

(4) Where an appropriate judicial officer issues a warrant under this section, he shall notify the Governor that he has done so.

(5) In this Part a warrant issued under this section is referred to as a “provisional warrant”.

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

8.—(1) A person arrested under a provisional warrant shall be brought before a competent court as soon as is practicable.

(2) If there is produced to the court a section 2 warrant in respect of that person, the court shall proceed as if he had been arrested under that warrant.

(3) If no such warrant is produced, the court shall remand him pending the production of such a warrant.

(4) Any provision made by Order in Council under paragraph 3 of Schedule 1 to this Act as it applies in the United Kingdom (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,

shall likewise apply in the Territory.

(5) If at any time when the person is so remanded there is produced to the court a section 2 warrant in respect of him—

- (a) the court shall terminate the period of remand, and
- (b) he 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 court before the end of the period of the remand (including any extension of that period), the court shall discharge him.

(7) The fact that a person has been discharged under this section does not prevent his subsequent arrest under a section 2 warrant.

### **Proceedings for delivery order**

9.—(1) A person arrested under a section 2 warrant shall be brought before a competent court as soon as is practicable.

(2) The competent court shall make a delivery order if it 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 person brought before the court is the person named or described in the warrant.

(3) A “delivery order” is an order that the person be delivered up—

(a) into the custody of the ICC, or

(b) 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 Governor.

(4) In the case of a person alleged to have committed an ICC crime, the competent court 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.

(5) In deciding whether to make a delivery order the competent court 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.

(6) Whether or not it makes a delivery order, the competent court may of its own motion, and shall on the application of the person arrested, determine—

(a) whether the person was lawfully arrested in pursuance of the warrant, and

(b) whether his rights have been respected.

(7) In making a determination under subsection (6) the competent court shall apply the principles which would be applied on an application for judicial review.

(8) If the competent court determines—

(a) that the person has not been lawfully arrested in pursuance of the warrant, or

(b) that the person’s rights have not been respected,

it shall make a declaration to that effect, but may not grant any other relief.

(9) The competent court shall notify the Governor of any declaration under subsection (8) and the Governor shall transmit that notification to the ICC.

### **Supplementary provisions as to proceedings before competent court**

10.—(1) Omitted

(2) In relation to proceedings before a competent court under section 5—

(a) the court has the like powers, as nearly as may be, including power to adjourn the case and meanwhile to remand the person whose surrender is sought, as if the proceedings were the summary trial of an information against that person;

(b) if the court adjourns the proceedings, it shall on doing so remand the person whose surrender is sought;

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (c) the proceedings are criminal proceedings for the purposes of any law of the Territory, or other arrangements in the Territory, for the provision of legal advice, assistance or representation in criminal proceedings;
  - (d) the provisions of the law of the Territory as to defence costs on dismissal of proceedings apply, reading references to the dismissal of the proceedings, however expressed, as a reference to the discharge of the person arrested.
- (3) Omitted

### **Consent to surrender**

**11.**—(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.

This is referred to below as “consent to surrender”.

- (2) Consent to surrender 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.
- (3) Consent to surrender must—
  - (a) be given in writing in the prescribed form or a form to the like effect, and
  - (b) be signed in the presence of a magistrate or other judicial officer.

The “prescribed form” means that prescribed by rules made by the rule-making authority for the competent court.

- (4) Where consent to surrender has been given—
  - (a) a competent court before which the person is brought shall forthwith make a delivery order, and
  - (b) he shall be taken to have waived his rights under section 12 (right to review of delivery order).
- (5) Where consent to surrender has been given, notice of that fact shall be given—
  - (a) if the person is in custody, to the prison governor, constable or other person in whose custody he is;
  - (b) if the person is on bail in the Territory, to the officer in charge of the police station at which is required to surrender to custody.
- (6) For the purposes of subsection (5)(b) notice shall be treated as given if it is sent by registered post, or recorded delivery, addressed to the officer mentioned.

### *Proceedings where court refuses delivery order*

### **Procedure where court refuses order**

- 12.**—(1) If a competent court refuses to make a delivery order, it shall—
  - (a) make an order remanding the person arrested, and
  - (b) notify the Governor of its decision and of the grounds for it.
- (2) If the court is informed without delay that an appeal is to be brought under section 9, the order remanding the person arrested shall continue to have effect.
- (3) If the court is not so informed, it shall discharge the person arrested.

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

**13.**—(1) If a competent court in the Territory refuses to make a delivery order, the Governor may appeal against the decision to the Supreme Court.

No permission is required for such an appeal, which shall be by the way of re-hearing.

(2) If the Supreme Court allows the appeal it may—

- (a) make a delivery order, or
- (b) remit the case to the competent court to make a delivery order in accordance with the decision of the Supreme Court.

(3) If the Supreme Court dismisses the appeal, the Governor may follow the normal appellate process applicable in the Territory so as to appeal the decision of the Supreme Court.

(4) If the Governor's appeal is ultimately unsuccessful, the Governor may, with the permission of the relevant appellate court or the Judicial Committee of the Privy Council, appeal to the Judicial Committee of the Privy Council.

The right to seek leave to appeal to the Judicial Committee of the Privy Council under this section shall exist even where the provisions of the applicable law in force in the Territory concerning an appeal to the Judicial Committee of the Privy Council do not include a right to appeal in the circumstances covered by this section. The provisions of the applicable law in force in the Territory shall apply in relation to an appeal to the Judicial Committee of the Privy Council under this section, with the omission of such provisions as may restrict the grant of leave to appeal.

(5) On any appeal from the Supreme Court, an appellate court and the Judicial Committee of the Privy Council may exercise any of the powers conferred on the Supreme Court by subsection (2) above.

(6) Where a delivery order is made by the Supreme Court, an appellate court or the Judicial Committee of the Privy Council, the provisions of section 11(1)(a) and (c), (2) and (3) (procedure where court makes delivery order) apply in relation to that court as they apply to a competent court in the Territory which makes a delivery order.

(7) An order for the remand of the arrested person which continues in force under section 8(2) shall cease to have effect if the Supreme Court or an appellate court dismisses the appeal and the Governor does not without delay—

- (a) apply for permission to appeal to the Judicial Committee of the Privy Council, or
- (b) inform the Supreme Court or the appellate court that he intends to apply for such permission.

Subject to that, any such order shall have effect so long as the case is pending. For this purpose a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to allow a step to be taken out of time) there is no step that the Governor can take.

**14.** Omitted

### *Proceedings where the court makes delivery order*

### **Procedure where court makes order**

**15.**—(1) Where a competent court makes a delivery order in respect of a person, the court shall—

- (a) commit the person to custody or on bail to await the Governor's directions as to the execution of the order,

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (b) inform the person of his rights under section 12 (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 Governor of its decision.
- (2) A person committed to custody under subsection (1)(a) shall be committed to prison or to the custody of a constable.
- (3) A court which commits a person to custody under subsection (1)(a) may subsequently grant bail.

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

**16.—**(1) The Governor shall not give directions for the execution of a delivery order until after the end of the period of 15 days beginning with the date on which the order is made.

This does not apply if the person in respect of whom the order is made—

- (a) waives his rights under this section (see section 13), or
  - (b) is taken to have done so (see section 7(4)(b)).
- (2) If before the end of that period an application for habeas corpus is made by the person in respect of whom the delivery order is made, or on his behalf, directions for the execution of the order shall not be given while proceedings on the application are still pending.
- (3) Proceedings on any such application 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.

- (4) On an application for habeas corpus to which this section applies—
  - (a) the court shall set aside the delivery order and order the person’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 court that made the delivery order (but with the substitution in section 5(6) for “makes a delivery order” of “sets aside the delivery order”).
- (5) Omitted

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

**17.—**(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 person himself, or
  - (b) in circumstances in which it is appropriate for a person 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 the prescribed form or a form to the like effect, and
  - (b) be signed in the presence of a magistrate or other judicial officer.

The “prescribed form” means that prescribed by rules made by the rule-making authority for the competent court.

- (4) Where a person has waived his right to review of the delivery order—
  - (a) no such application as is mentioned in section 12 may be made, and



- (b) the order shall be taken for all purposes to be validly made.
- (5) Where a person has waived his right to review, notice of that fact shall be given—
  - (a) if the person is in custody, to the prison governor, constable or other person in whose custody he is;
  - (b) if the person is on bail in the Territory, to the officer in charge of the police station at which he is required to surrender to custody.
- (6) For the purposes of subsection (5)(b) notice shall be treated as given if it is sent by registered post, or recorded delivery, addressed to the officer mentioned.

### *Warrants, custody, bail and related matters*

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

- 18.**—(1) For the purpose of any enactment or rule of law relating to warrants of arrest—
- (a) a section 2 warrant endorsed or issued in the Territory, or
  - (b) a provisional warrant issued in the Territory,
- shall be treated as if it were a warrant for the arrest of a person for an offence committed in the Territory.
- (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 a competent court.

#### **Effect of delivery order**

- 19.**—(1) A delivery order is sufficient authority for any person acting in accordance with the directions of the Governor to receive the person to whom the order relates, 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 Governor.
- (2) A person in respect of whom a delivery order is in force is deemed to be in legal custody at any time when, being—
    - (a) in the Territory, or
    - (b) on board a British ship, a British aircraft or a British hovercraft, or a ship, aircraft or hovercraft registered in the Territory,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 person to whom the order relates to or from any place or, to keep him in custody, has (whether in or outside the Territory) all the powers, authority, protection and privileges of a constable in the Territory.
  - (4) If a person in respect of whom a delivery order is in force 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.
  - (5) Omitted

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

- 20.**—(1) Where under this Part a court has power to remand a person, the court may—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) remand him in custody, that is, commit him for the period of the remand to prison or to the custody of a constable, or
  - (b) if an application for bail is made to the court, remand him on bail, that is, direct him to surrender himself into the custody of the officer in charge of a specified police station at the time appointed for him to do so.
- (2) The law of the Territory as to bail applies to proceedings under this Part in the Territory as it applies to proceedings against a fugitive offender.
- (3) The time appointed under subsection (1)(b) for a person to surrender to custody—
- (a) shall be a time appointed by the officer in charge of the specified police station and notified in writing to the person remanded, and
  - (b) shall not be more than 24 hours before the time at which it appears to that officer that the period of remand is likely to end.
- (4) Omitted
- (5) Nothing in this Part shall be taken as authorising a court to grant bail to a person who is serving a sentence of imprisonment or detention to which he has been sentenced by a national court, or who is in custody awaiting trial or sentence by a national court.

#### **Bail and custody: supplementary**

**21.**—(1) The following provisions apply where a person is granted bail under this Part by a competent court in the Territory.

- (2) Where a court—
- (a) grants bail but is unable to release the person 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 court shall in the meantime commit the person to the custody of a constable.

(3) During the period between the surrender of a person to custody and the end of the period of remand he shall be treated as committed to the custody of the constable to whom he surrenders.

(4) Where it appears to that officer that the end of the period of remand will be unexpectedly delayed, he shall grant the person bail subject to a duty to surrender himself into the custody of the officer in charge of the specified police station at the time appointed for him to do so. The time appointed under this subsection for the person to surrender to custody—

- (a) shall be a time to be appointed by the officer in charge of the specified police station and notified in writing to the person remanded, and
  - (b) shall not be more than 24 hours before the time at which it appears to that officer that the period of remand is likely to end.
- (5) If a person required to surrender to custody in accordance with subsection (4) fails to do so—
- (a) the court by which he was remanded may issue a warrant for his arrest,
  - (b) provisions of section 14 (effect of warrant of arrest) apply in relation to the warrant, and
  - (c) on his arrest the person shall be brought before the court which shall reconsider the question of bail.

(6) In this section “the specified police station” means the police station specified by the competent court under section 16(1)(b).

### **Bail and custody: consultation with the ICC, &c**

- 22.**—(1) Where an application for bail is made in proceedings under this Part in the Territory—
- (a) the court shall notify the Governor of the application,
  - (b) bail shall not be granted without full consideration of any recommendations made by the ICC.
- (2) Omitted
- (3) In considering any such application as is mentioned in subsection (1) the court shall consider—
- (a) whether, given the gravity of the offence or offences he 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
  - (b) whether any necessary measures have been or will be taken to secure that the person will surrender to custody in accordance with the terms of his bail.

### **Discharge of person not delivered up**

- 23.**—(1) If the person in respect of whom a delivery order has been made is not delivered up under the order within 40 days after it was made, an application may be made, by him or on his behalf, for his discharge.
- (2) The application shall be made to the Supreme Court.
- (3) On an application under this section the court shall order the person's discharge unless reasonable cause is shown for the delay.

### **Discharge of the person no longer required to be surrendered**

- 24.**—(1) Where the ICC informs the Governor that a person arrested under this Part is no longer required to be surrendered—
- (a) the Governor shall notify an appropriate judicial authority of that fact, and
  - (b) the authority shall, on receipt of the notification, make an order for his discharge.
- (2) Omitted

### *Request for transit and unscheduled landing*

#### **Request for transit**

- 25.**—(1) This section applies where the Governor receives a request from the ICC for transit of a person being surrendered by another state.
- (2) If the Governor accedes to the request—
- (a) the request shall be treated for the purposes of this Part as if it were a request for that person's arrest and surrender,
  - (b) the warrant accompanying the request shall be deemed to have been endorsed under section 2(3), and
  - (c) the person to whom the request relates shall be treated on arrival in the Territory as if he had been arrested under that warrant.
- (3) In relation to a case where this section applies—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) the reference in section 5(2)(a)(i) to the warrant having been duly endorsed under section 2(3) shall be read as a reference to the Governor having acceded to the request for transit; and
  - (b) section 12(1) (right to review of delivery order: period for making application) shall have effect as if the reference to 15 days (the period during which directions to execute delivery order are not to be given) were a reference to two days.
- (4) A person in transit under this section shall not be granted bail.

### **Unscheduled landing**

**26.**—(1) If a person being surrendered by another state makes an unscheduled landing in the Territory, he may be arrested by any constable and shall be brought before a competent court as soon as is practicable.

- (2) The court shall remand him in custody pending—
  - (a) receipt by the Governor of a request from the ICC for his transit, and
  - (b) the Governor’s decision whether to accede to the request.
- (3) If no such request is received by the Governor before the end of the period of 96 hours beginning with the time of the arrested person’s unscheduled landing—
  - (a) the Governor shall forthwith notify the court of that fact, and
  - (b) the court shall, on receipt of the notification, discharge the arrested person.
- (4) If the Governor receives such a request before the end of that period, he shall notify the court without delay of his decision whether to accede to the request.
- (5) If the Governor notifies the court that he has decided to accede to the request—
  - (a) the court shall, on receipt of the notification, terminate the period of remand, and
  - (b) the provisions of section 21 (request for transit) apply with the substitution for the reference in subsection (2)(c) to the time of arrival in the Territory of a reference to the time of notification to the court.
- (6) If the Governor notifies the court that he has decided not to accede to the request, the court shall, on receipt of the notification, discharge the arrested person.
- (7) Omitted.

### *Supplementary provisions*

#### **Provisions as to state or diplomatic immunity**

**27.**—(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 Governor—
  - (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 Governor 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) Any Order in Council made under section 1 of the United Nations Act 1946 (c.45), as extended by section 23(5) of this Act as it applies in the United Kingdom, shall likewise apply in the Territory.

(6) 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 Diplomatic Privileges Act 1964 (c.81), the Consular Relations Act 1968 (c.18), the International Organisations Act 1968 (c.48) or the State Immunity Act 1978 (c.33) as applying in the Territory,
- (b) any other law applying in the Territory made for the purpose of implementing an international obligation, or
- (c) any rule of law derived from customary international law.

#### **Delivery up of persons subject to criminal proceedings, &c**

**28.**—(1) Schedule 2 makes provision for cases where the Governor 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 Territory, or who has been dealt with in such proceedings,
- (b) against whom extradition proceedings are pending or in progress in the Territory, 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 Territory for a delivery order in connection with proceedings in any other international tribunal.

#### **Documents having effect as warrants, &c**

**29.**—(1) For the purposes of this Part the copy of a warrant issued by the ICC that is transmitted to the Governor 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. Any such documents 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.

This does not affect the validity of anything done in reliance on the old warrant.

#### **Meaning of “appropriate judicial authority” and “competent court”**

**30.** For the purposes of this Part—

“appropriate judicial authority” means a magistrate or other judicial authority of the Territory, and

“competent court” means a court consisting of an appropriate judicial officer.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## PART 3 OTHER FORMS OF ASSISTANCE

### *Introduction*

#### **Provision of assistance**

**31.**—(1) The powers conferred by this Part on the Governor are exercisable for the purpose of providing assistance to the ICC in relation to investigations or prosecutions where—

- (a) an investigation has been initiated by the ICC, and
- (b) the investigation and any proceedings arising out of it have not been concluded.

(2) Where facsimile transmission is used—

- (a) for the making of a request by the ICC or the transmission of any supporting documents, or
- (b) for the transmission of any document in consequence of such a request,

this Part applies as if the documents so sent were the originals of the documents so transmitted.

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*

#### **Questioning**

**32.**—(1) This section applies where the Governor 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 to this Act.

(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 its reasonably practicable.

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

**33.**—(1) This section applies where the Governor 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 Governor may nominate a court in the Territory to receive the evidence to which the request relates.

(3) For this purpose the nominated court—

- (a) has the same powers with respect to securing the attendance of witnesses and the production of documents or other articles as it has for the purpose of other proceedings before the court; and
  - (b) may take evidence on oath.
- (4) 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 in the Territory.
- (5) If in order to comply with the request it is necessary for the evidence by the court to be verified in any manner, the notice nominating the court shall specify the nature of the verification required.
- (6) No order for costs shall be made in proceedings under this section.

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

**34.**—(1) The following provisions apply in relation to proceedings before a nominated court under section 29 and the evidence received in the proceedings.

- (2) The court may, if it 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 court.
- (3) The court shall ensure that a register is kept of the proceedings that indicates, 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 register shall not be open to inspection except as authorised by the Governor or with the leave of the court.
- (5) A copy of the register of the proceedings shall be sent to the Governor for transmission to the ICC.

### **Service of process**

**35.**—(1) This section applies where the Governor receives from the ICC a summons or other document together with a request for it to be served on a person in the Territory.

- (2) The Governor may direct the chief officer of police for the Territory to cause the document to be personally served on that person.
- (3) If the document is so served, the chief officer of police shall forthwith inform the Governor when and how it was served.
- (4) If it does not prove possible to serve the document, the chief officer of police shall forthwith inform the Governor of that fact and of the reason.
- (5) Omitted.

### **Transfer of prisoner to give evidence or assist in investigation**

**36.**—(1) This section applies where the Governor receives a request from the ICC for the temporary transfer of a prisoner to the ICC for the purposes of identification or for obtaining testimony or other assistance.

- (2) Omitted

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(3) The Governor may issue a warrant (a “transfer warrant”) requiring the prisoner to be delivered up, in accordance with the arrangements made by the Governor with the ICC, into the custody of the ICC.

(4) A transfer warrant shall not be issued unless a prisoner consents to the transfer, but consent may not be withdrawn after the issue of the warrant.

(5) The following provisions of Part 2 of this Act apply in relation to a transfer warrant under this section as they apply in relation to a delivery order under that Part—

- (a) section 15 (effect of delivery order), and
- (b) section 24 and Schedule 2 (delivery up of persons subject to criminal proceedings, &c).

(6) In this section “prisoner” means—

- (a) a person serving a sentence of detention or imprisonment (including a sentence imposed by a service court),
- (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 prison for contempt or for failure to pay a fine,
  - (iii) a person in custody in connection with proceedings to which Part 2 or 3 of Schedule 2 applies (extradition or other delivery proceedings),
  - (iv) a person detained under any law of the Territory relating to the control of entry to the Territory.

(7) For the purposes of any law relating to the control of entry to the Territory a person detained under any provision of that law is not to be regarded as having left the Territory 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).

(8) Omitted.

### **Entry, search and seizure**

**37.**—(1) This section applies where the Governor receives from the ICC a request for assistance which appears to him to require the exercise of any of the powers of entry, search and seizure available to a constable under the law of the Territory in the investigation of a serious arrestable offence.

(2) The Governor may direct a constable to apply for a warrant or order under the law of the Territory authorising the exercise by him of any of those powers, which shall apply in relation to an ICC crime as it applies to a serious arrestable offence under the law of the Territory.

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

**38.**—(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” includes palm prints, and a non-intimate sample is—

- (a) a sample of hair other than pubic hair,
- (b) a sample taken from a nail or from under a nail,
- (c) a swab taken from any part of a person’s body including the mouth but not any other body orifice,
- (d) saliva,



- (e) a footprint or a similar impression of any part of a person's body other than a part of his hand.

### **Orders for exhumation**

**39.** Proceedings before the ICC in respect of an ICC crime are criminal proceedings for the purposes of any power of a coroner under the law of the Territory to order exhumation.

### **Provision of records and documents**

**40.**—(1) This section applies where the Governor receives a request from the ICC for the provision of records and documents relating to—

- (a) the evidence given in any proceedings in the Territory 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 Governor shall take such steps as appear to him to be appropriate to obtain the records and documents requested, and on their being produced to him he shall transmit them to the ICC.

### **Investigation of proceeds of ICC crime**

**41.**—(1) Where the Governor 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 Governor may direct a constable to apply for an order or warrant under Schedule 5.

(2) In that Schedule—

- (a) Part 1 makes provision for production or access orders,
- (b) Part 2 makes provisions for the issuing of search warrants, and
- (c) Part 3 contains supplementary provisions.

### **Freezing order in respect of property liable to forfeiture**

**42.** Where the Governor 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 may—

- (a) authorise a person to act on behalf of the ICC for the purpose of applying for a freezing order, and
- (b) direct that person to apply for such an order under Schedule 6.

## *National Security*

### **Production or disclosure prejudicial to national security**

**43.**—(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 of any overseas territory.

(2) For the purposes of any such provision a certificate signed by or on behalf of the Secretary of State to the effect that it would be prejudicial to the security of the United Kingdom, or of a

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

specified overseas territory, for specified documents to be produced, or for specified information to be disclosed, is conclusive evidence of that fact.

### *Supplementary provisions*

#### **Verification of material**

**44.** 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 Governor may give directions as to the nature of the verification required.

#### **Transmission of material to the ICC**

**45.—**(1) Any evidence or other material obtained under this Part by a person other than the Governor, together with any requisite verification, shall be sent to the Governor 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**

- 46.** Omitted
- 47.** Omitted
- 48.** Omitted
- 49.** Omitted
- 50.** Omitted
- 51.** Omitted
- 52.** Omitted

#### **Power to make provision for enforcement of other orders**

**53.—**(1) The Governor may make provision by regulations for the enforcement in the Territory 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 Governor—

- (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 him necessary.

(3) The regulations made under this section shall provide for the registration of the order of the ICC by a court in the Territory as a precondition of enforcement.

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

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.

(4) The regulations made under this section may provide that—

- (a) for the purposes of enforcement an order so registered has the same force and effect,
- (b) the same powers are exercisable in relation to its enforcement, and
- (c) proceedings for its enforcement may be taken in the same way,

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

The regulations under this section may for that purpose apply all or any of the provisions (including provisions of subordinate legislation) relating to the enforcement in the Territory of orders of a court of a country or territory outside the Territory.

(5) 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.

(6) The regulations under this section 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.

(7) Regulations made under this section may make different provision for different kinds of order

## PART 5

### OFFENCES UNDER DOMESTIC LAW

#### *Introduction*

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

**54.—**(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 any relevant Elements of Crimes adopted in accordance with article 9.

(3) The Elements of Crimes referred to in subsection (2), are set out in regulations made under section 50(3) of this Act as it applies in the United Kingdom.

(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.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Whether such a reservation or declaration has been made and the terms in which it was made, and whether such a reservation or declaration has been withdrawn (in whole or in part), shall be certified by Her Majesty by Order in Council made under section 50(4) of this Act as it applies in the United Kingdom.

(5) In interpreting and applying the provisions of the articles referred to in subsection (1) 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) The relevant provisions of the articles of the ICC Statute referred to this section are set out in Schedule 8 to this Act.

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.

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

**55.**—(1) It is an offence against the law of the Territory for a person to commit genocide, a crime against humanity or a war crime.

(2) This section applies to acts committed—

- (a) in the Territory, or
- (b) outside the Territory by a United Kingdom national, a Territory resident or a person subject to Territory service jurisdiction.

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

**56.**—(1) It is an offence against the law of the Territory for a person to engage in conduct ancillary to an act to which this section applies.

(2) This section applies to an act that if committed in the Territory would constitute—

- (a) an offence under section 51 (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 Territory, 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 Territory.

(4) This section applies where the conduct in question consists of or includes an act committed—

- (a) in the Territory, or
- (b) outside the Territory by a United Kingdom national, a Territory resident or a person subject to Territory service jurisdiction.

### **Trial and punishment of main offences**

**57.**—(1) The following provisions apply in relation to—

- (a) offences under section 51 (genocide, crimes against humanity and war crimes),
- (b) offences under section 52 (conduct ancillary to genocide, etc. committed outside jurisdiction), and
- (c) offences ancillary to an offence within paragraph (a) or (b) above.

(2) The offence is triable only on indictment.

(3) Proceedings for an offence shall not be instituted except by or with the consent of the Attorney General.

- (4) If the Offence is not committed in the Territory—
- (a) proceedings may be taken, and
  - (b) the offence may for incidental purposes be treated as having been committed, in any place in the Territory.
- (5) 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 Territory, constitute murder.
- (6) In any case a person convicted of an offence is liable to imprisonment for a term not exceeding 30 years.

### **Offences in relation to the ICC**

**58.**—(1) A person intentionally committing any of the acts mentioned in article 70.1 (offences against the administration of justice in relation to the ICC) may be dealt with as for the corresponding domestic offence committed in relation to a superior court in the Territory.

(2) In interpreting and applying the provisions of article 70.1 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.

- (3) The corresponding domestic offences are—
- (a) in relation to article 70.1(a) (giving false testimony when under an obligation to tell the truth), an offence of perjury, however described, under the law of the Territory;
  - (b) in relation to article 70.1(c) (interference with witness or evidence), an offence under the law of the Territory of interfering with a witness or evidence;
  - (c) in relation to article 70.1(b) or (d) to (f) (other offences), an offence at common law, or under any provision of the law of the Territory, in respect of any of those matters.
- (4) This section and, so far as may be necessary for the purposes of this section, the enactments and rules of law relating to the corresponding domestic offences apply to acts committed—
- (a) in the Territory, or
  - (b) outside the Territory by a United Kingdom national, a Territory resident or a person subject to Territory 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) If an offence under this section, or an offence ancillary to such an offence, is not committed in the Territory—
- (a) proceedings may be taken, and
  - (b) the offence may for incidental purposes be treated as having been committed, in any place in the Territory.
- (7) The relevant provisions of article 70.1 are set out in Schedule 9 to this Act.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

### **Meaning of “ancillary offence”**

**59.**—(1) References in this Part to an ancillary offence under the law of the Territory 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.

(2) In subsection (1)(a) the reference to aiding, abetting, counselling or procuring is to such conduct, however expressed, that in relation to an indictable offence would be punishable under the law of the Territory, whether under any provision of that law or at common law.

(3) In subsection (1)(b) the reference to incitement is to conduct amounting to an offence of incitement, however expressed, under the law of the Territory, whether under any provision of that law or at common law.

(4) In subsection (1)(c)—

- (a) the reference to an attempt is to conduct amounting to an offence of attempt, however expressed, under the law of the Territory, whether under any provision of that law or at common law; and
- (b) the reference to conspiracy is to conduct amounting to an offence of conspiracy, however expressed, under the law of the Territory, whether under any provision of that law or at common law.

(5) In subsection (1)(d)—

- (a) the reference to assisting an offender is to such conduct that would amount to an offence under the law of the Territory, whether under any provision of that law or at common law; and
- (b) the reference to concealing an offence is to such conduct that would amount to an offence under the law of the Territory, whether under any provision of that law or at common law.

### **Saving for general principles of liability, etc**

**60.**—(1) In determining whether an offence under this Part has been committed the court shall apply the principles of the law of the Territory.

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

- (a) the extra-territorial application of offences (including offences under this Part), or
- (b) offences ancillary to offences under this Part (wherever committed).

### **Protection of victims and witnesses**

**61.**—(1) Any provisions of the law of the Territory of a description specified below (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 51 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 51 involving conduct constituting the substantive offence in question, and

- (ii) an offence under section 52 involving conduct constituting that ancillary offence in relation to an act to which that section applies involving conduct constituting the substantive offence in question.
- (2) The provisions are—
  - (a) provisions for the protection of victims of sexual offences;
  - (b) provisions for the protection of witnesses and complainants; and
  - (c) provisions in relation to proceedings for sexual offences imposing restrictions on access by defendants and others to material disclosed in connection with such proceedings.
- (3) In subsection (1) above—
  - (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 Territory.
- 62.** Omitted
- 63.** Omitted
- 64.** Omitted
- 65.** Omitted
- 66.** Omitted
- 67.** Omitted
- 68.** Omitted

*Supplementary provisions*

**Responsibility of commanders and other superiors**

- 69.**—(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

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(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.

### **Mental element**

**70.**—(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 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.

### **Meaning of “UK national”, Territory resident” and “person subject to Territory service jurisdiction”**

**71.**—(1) In this Part a “United Kingdom national” means an individual who is a British citizen, a British Dependent Territories citizen, a British National (Overseas), a British Overseas Citizen, a British subject or a British protected person.



*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (2) In this Part a “Territory resident” means a person who is resident in the Territory.
- (3) In this Part a “person subject to Territory service jurisdiction” means—
  - (a) a member of any military or air force raised under the law of the Territory, or force raised for the naval defence of the Territory; or
  - (b) a person who by reason of his connection with such a member or force may be proceeded against for an offence in like manner as a person mentioned in paragraph (a).

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

72.—(1) This section applies in relation to a person who commits acts outside the Territory at a time when he is not a United Kingdom national, a Territory resident or a person subject to Territory service jurisdiction and who subsequently becomes resident in the Territory.

(2) Proceedings may be brought against such a person in the Territory for a substantive offence under this Part if—

- (a) he is resident in the Territory 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 Territory.

(3) Proceedings may be brought against such a person in the Territory for an offence ancillary to a substantive offence under this Part (or what would be such a substantive offence if committed in the Territory) if—

- (a) he is resident in the Territory 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 Territory.

(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 provisions of this Part.

### **References to acts to include omissions, etc**

73.—(1) In this part “act”, except where the context otherwise requires, includes an omission, and references to conduct have a corresponding meaning.

74. Omitted

75. Omitted

76. Omitted

77. Omitted

78. Omitted

## **PART 6**

### **GENERAL PROVISIONS**

#### *Interpretation*

#### **Meaning of “national court”**

79. In this Act “national court” means a court in the Territory.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

### Meaning of “British aircraft”, “British hovercraft” and “British ship”

**80.**—(1) In this Act, references to “British aircraft”, “British hovercraft” and “British ship” are to an aircraft, hovercraft or, as the case may be, ship which is registered in the Territory or which is one of Her Majesty’s aircraft, hovercraft or ships.

(2) References in subsection (1) to Her Majesty’s aircraft, hovercraft or ships are to the aircraft, hovercraft or, as the case may be, ships which belong to, or are exclusively employed in the service of, Her Majesty in right of the Government of the United Kingdom or registered in the Territory in the service of the Government of the Territory.

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

**81.**—(1) Section 23 (provisions as to state or diplomatic immunity) applies in relation to proceedings in other international tribunals as it applies in relation to proceedings under Part 2 of this Act, with the following adaptations.

(2) The adaptations are—

- (a) in subsection (1) omit the words “by reason of a connection with a state party to the ICC Statute”;
- (b) omit subsections (2) and (3)
- (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)”.

(3) Omitted

(4) Omitted

### Crown application

**82.** 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.

**83.** Omitted

**84.** Omitted

### *Final provisions*

### Index of defined expressions

**85.** In this Act the expressions listed below are defined or otherwise explained by the provisions indicated—

act and conduct (in Part 5)	section 69
ancillary offence (in Part 5)	section 55
appropriate judicial officer (in Part 2)	section 26
article	section 1(2)
British aircraft, British hovercraft and British ship	section 76

---

---

competent court (in Part 2)	section 26
crime against humanity (in Part 5)	section 50(1)
delivery order (in Part 2)	section 5(3)
genocide (in Part 5)	section 50(1)
the ICC	section 1(1)
ICC crime	section 1(1)
the ICC Statute	section 1(1)
national court	section 75
provisional warrant (in Part 2)	section 3(5)
remand (in Part 2)	section 16
section 2 warrant (in Part 2)	section 2(5)
United Kingdom national (in Part 5)	section 67(1)
war crime (in Part 5)	section 50(1)

---

**86.** Omitted

**87.** Omitted

**88.** Omitted

## SCHEDULE 1

### SUPPLEMENTARY PROVISIONS RELATING TO THE ICC

#### *Legal capacity, privileges and immunities*

**1.** Any Order in Council made by Her Majesty under paragraph 1 of Schedule 1 to this Act<sup>(2)</sup> as it applies in the United Kingdom, which—

- (a) confers on the ICC the legal capacities of a body corporate; and/or
- (b) provides for the ICC and/or any person to have privileges and immunities,

shall likewise apply as part of the law of the Territory.

#### *Power to provide for sittings of the ICC in the Territory*

**2.—(1)** Her Majesty may by Order in Council make such provisions as appears to Her Majesty to be necessary or expedient to enable sittings of the ICC to be held in the Territory.

(2) Provision may in particular be made with respect to the detention of persons in the custody of the ICC.

---

(2) Paragraph 1 of Schedule 1 of this Act was amended by section 6 of the International Organisations Act 2005 (c.20).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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

3.—(1) Any Order in Council made by Her Majesty under paragraph 3 of Schedule 1 to this Act as it applies in the United Kingdom, which makes provision for giving effect to any Rules of Procedures and Evidence having effect under article 51, shall likewise apply as part of the law of the Territory.

(2) Her Majesty may by Order in Council make such provision as appears to Her Majesty to be necessary or expedient for giving effect to any related agreement to which the United Kingdom, or Her Majesty's Government in the United Kingdom, is a party.

4. Omitted

*Proof of Orders, etc, of the ICC*

5.—(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 others*

6.—(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.

*Pension provision for judges of ICC*

7.—(1) The Governor may by order make provision for securing that a holder of a judicial office in the Territory who serves as a judge of the ICC is not worse off as regards pension benefits than if he had not been appointed to the ICC.

(2) The order may—

- (a) entitle an ICC judge who was, immediately before his appointment as an ICC judge, a member of a judicial or other public service pension scheme in the Territory (“a relevant pension scheme”) to remain as a member of that scheme, or
- (b) authorise the making of such other arrangements as appear to the Governor to be appropriate.

(3) An order making such provision as is mentioned in sub-paragraph (2)(a) may include such provision as the Governor considers is necessary to secure—

- (a) that the terms on which an ICC judge remains a member of a relevant pension scheme are those which would have been applicable had he not been appointed as an ICC judge, and
- (b) that entitlement to benefits payable in accordance with the scheme continues to be determined as if, while serving as an ICC judge, his salary was that which would have been payable to him in respect of his continuing service as the holder of his judicial office in the Territory.

(4) An order making such provision may also make provision—

- (a) for any contributions payable by a person who remains a member of a relevant pension scheme as a result of the order, and which would otherwise be payable by deduction from his salary, to be made otherwise than by deduction from his salary as an ICC judge, and
- (b) for such contributions to be collected in such manner as may be determined by the administrators of the scheme.

(5) An order making such provision—

- (a) omitted
- (b) may amend any provision of, or made under, any law of the Territory relating to a relevant pension scheme in such manner and to such extent as the Governor considers necessary or expedient to ensure the proper administration of scheme to which it relates.

(6) Any payments made in pursuance of such arrangements as are mentioned in sub-paragraph (2)(b) to, or in respect of, a holder of a judicial office in the Territory shall be charged on, and paid out of, the consolidated fund of the Territory or such other fund out of which pension payments in respect of that judicial office are paid.

(7) Omitted

(8) Omitted

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE 2

### DELIVERY UP OF PERSONS SUBJECT TO CRIMINAL PROCEEDINGS, & C

#### PART 1

#### CRIMINAL PROCEEDINGS

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

1. In this Part of this Schedule “criminal proceedings” means proceedings before a national court—

- (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).

2.—(1) Where—

- (a) the Governor 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 before a court in the Territory,

the Governor 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) If a delivery order is made and the criminal proceedings are still pending or in progress, the Governor—

- (a) shall consult the ICC before giving directions for the execution of the order, and
- (b) may direct that the criminal proceedings shall be discontinued.

(4) Where the Governor directs that criminal proceedings shall be discontinued, 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.

3. Omitted

4. Omitted

##### *Effect on custodial sentences*

5.—(1) Where in pursuance of Part 2 of this Act a person who is a prisoner is delivered up—

- (a) into the custody of the ICC, or
- (b) into the custody of a state where he is to undergo imprisonment under a sentence of the ICC,

he shall continue to be liable to complete any term of imprisonment or detention to which he had been sentenced by a national court.

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 another state.

(2) Where in pursuance of Part 2 of this Act a court orders the discharge of a person who is a prisoner, the discharge is without prejudice to the liability of the prisoner to complete any term of imprisonment or detention to which he has been sentenced by a national court.

Accordingly, a prisoner 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 prisoner, the order may include provision authorising the return of the prisoner into the custody of the Governor—

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

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

(4) Omitted

(5) In this paragraph “prisoner” means a person serving a sentence of detention or imprisonment (including a sentence imposed by a service court).

#### *Power to suspend or revoke other orders*

6.—(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 imprisonment or detention) has been made in criminal proceedings before a national court.

(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

7.—(1) In this Part of this Schedule “extradition proceedings” means proceedings before a court in the Territory under—

- (a) the Extradition Act 1989 or under that Act as extended to the Territory by the Extradition (Overseas Territories) Order 2002, or
- (b) any other provisions in force in the Territory for the surrender of a fugitive offender to another country or territory,

apart from proceedings to which Part 3 of this Schedule applies.

In this Part of this Schedule references to a court include references to a judge.

8.—(1) Where—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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

the Governor 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) If a delivery order is made and the extradition proceedings are still pending or in progress, the Governor—

- (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 Governor directs that extradition proceedings shall be discontinued, 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 extradition proceedings in respect of an offence does not prevent the institution of fresh extradition proceedings in respect of the offence.

**9. Omitted**

*Power to suspend or revoke warrant or order*

**10.**—(1) Where a court in the Territory makes a delivery order in respect of a person who has been committed for surrender or ordered to be delivered up in extradition proceedings in the Territory, 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”*

**11.** In this Part of this Schedule “other delivery proceedings” means proceedings before a court in the Territory for an order for the delivery of a person in pursuance of proceedings before an international tribunal other than the ICC, and “the relevant International Tribunal”, in relation to such proceedings, means the international tribunal in which the proceedings are instituted.

*Delivery proceedings in the Territory*

**12.**—(1) Where—

- (a) the Governor receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and



- (b) other delivery proceedings against that person are pending or in progress before a court in the Territory,
- the Governor shall consult the ICC and the relevant International Tribunal.
- (2) The Governor 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 under this Part of this Act.
  - (4) If a delivery order is made under this Part of this Act and the other delivery proceedings are still pending or in progress, the Governor—
    - (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 Governor directs that the other delivery proceedings shall be discontinued, 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 under this Part 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.

**13.** Omitted.

*Power to suspend or revoke previous delivery order*

- 14.**—(1) Where a court makes a delivery order under this Part of this Act in respect of a person in respect of whom a delivery order has been made in pursuance of other delivery proceedings the court may make any order necessary to enable the person to be delivered up under this Part of this Act.
- (2) The court may, in particular, suspend or revoke the other delivery order.
- 15.** In this Part of this Schedule references to a court include references to a judge.

SCHEDULE 3

RIGHTS OF PERSONS DURING INVESTIGATION: Article 55

ARTICLE 55

RIGHTS OF PERSONS DURING AN INVESTIGATION

- 1. In respect of an investigation under this Statute, a person:
  - (a) Shall not be compelled to incriminate himself or herself or to confess guilt;
  - (b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
  - (c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (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

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

- 1.—(1) Where the Governor receives a request from the ICC for assistance in obtaining evidence as to the identity of a person, he may nominate a court in the Territory to supervise the taking of the person's fingerprints or a non-intimate sample (or both).
- (2) He shall not do so unless—
- (a) he is satisfied that other means of identification have been tried and have provided inconclusive, and
  - (b) he has notified the ICC of that fact and the ICC has signified that it wishes to proceed with the request.

###### *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, the law of the Territory applies—
- (a) as to whether the sample is a sufficient sample, and
  - (b) as to the manner of taking the sample,
- as it applies to the investigation of a serious offence under the law of the Territory.
- (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 seven 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 prison 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” means the consent of the person concerned or, where the law of the Territory provides for consent to be given on that person’s behalf by some other person, the consent of that other person.

(3) The court shall inform the person concerned of the effect of this paragraph.

### *Taking of evidence without consent*

5.—(1) A constable may be authorised by a superior officer to take the necessary identification evidence without consent.

(2) An officer may given 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.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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

*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 any law of the Territory providing for the 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 sub-paragraph (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 against which checking is permitted for the purposes of the investigation of an offence under the law of the Territory.

(5) For the purposes of this paragraph a “relevant offence” means an ICC crime or an offence under Part 5 of this Act.

(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. The law of the Territory as to the retention and 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 Territory.

SCHEDULE 5

INVESTIGATION OF PROCEEDS OF ICC CRIME

PART 1

PRODUCTION OR ACCESS ORDERS

*Application for order*

1.—(1) An order under this Part of this Schedule may be made by a judge of the Supreme Court on an application made in pursuance of a direction by the Governor under section 37(1) (investigation of proceeds of ICC crime).

(2) Any such application in the Territory may be made without notice and may be granted without a hearing.

*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 includes 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 seven 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 or access order is made by virtue of paragraph 4 (special orders), 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 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 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 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.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (4) The modifications are—
- (a) that 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) that 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) above.
- (5) In this paragraph “specified” means specified in the order.

*Effect of order: general*

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

- (2) Provision may be made by rules of court as to—
- (a) the discharge and variation of such orders, and
  - (b) proceedings relating to such orders,

and in this sub-paragraph “rules of court” means rules made for the purposes of this Part by an appropriate rule-making authority in the Territory.

*Effect of order: supplementary*

6.—(1) The following provisions have effect with respect to the effect of an order under this Part of this Schedule.

(2) Where the material to which the order relates consists of information contained in a computer—

- (a) a production order has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
- (b) an access order has effect as an order to give access to the material in a form in which it is visible and legible.

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

(4) Subject to 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 any provisions of the law of the Territory relating to access to, and the copying and retention of, seized material in the investigation of serious offences, material produced in pursuance of an order under this Part of this Schedule shall be treated as if it were material seized by a constable in connection with the investigation of a serious offence under the law of the Territory.

*Order in relation to material in possession of government department*

7.—(1) An order under this Part of this Schedule may be made in relation to material in the possession, custody or power of a government department.

- (2) An order so made—
- (a) shall be served as if the proceedings were civil proceedings against the department, and
  - (b) may require any officer of the department, 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.

(3) In this paragraph “government department” means a department of the government of the Territory for the purposes of any law relating to proceedings against the Crown.

## PART 2 SEARCH WARRANTS

### *Application for warrant*

**8.**—(1) A search warrant may be issued under this Part of this Schedule by a competent court of the Territory on an application made in pursuance of a direction by the Governor under section 37(1) (investigation of proceeds of ICC crime).

(2) For the purposes of this Part a competent court is a court or other judicial authority having power under the law of the Territory to issue a search warrant in a case of serious crime.

### *Effect warrant*

**9.**—(1) A search warrant issued under this Part of this Schedule authorises any constable—

- (a) to enter and search the premises specified in the warrant, 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 court may issue a search warrant under this Part of this Schedule in the following cases.

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

(3) The second case is where the court is satisfied—

- (a) that there are reasonable grounds for suspecting that a specified person has benefited from an ICC crime,
- (b) that there are grounds for making a production or access order (see paragraph 2) in relation to material on the premises, and
- (c) that it would not be appropriate to make a production or access order in relation to the material for any of the 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 court is satisfied—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (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 a customs officer, and

“items subject to legal privilege” and “premises” shall be construed as they would be for the purposes of the law of the Territory relating to a constable’s powers of search and seizure in the investigation of an offence.

## SCHEDULE 6

### SUPPLEMENTARY PROVISIONS

#### *Application for freezing order*

**1.**—(1) A freezing order may be made by the Supreme Court on an application in pursuance of a direction given by the Governor under section 38, and any such application may be made without notice and may be granted without a hearing.

(2) Omitted

#### *Grounds for making order*

**2.** The Court may make a freezing order if it is satisfied—

- (a) that a forfeiture order has been made in proceedings before the ICC, or
- (b) that there are reasonable grounds for believing that a forfeiture order may be made in such proceedings,



and that the property to which the order relates consists of or includes property that is or may be affected by such a forfeiture order.

#### *Effect of order*

3.—(1) A “freezing order” is an order prohibiting any person from dealing with property specified in the order otherwise than in accordance with such conditions and exceptions as may be specified in the order.

(2) A freezing order shall provide for notice to be given to persons affected by the order.

#### *Variation or discharge of order*

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

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

#### *Power to appoint receiver*

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

(2) The Supreme 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 Supreme 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 Territory, seize the property.

(2) Omitted.

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

#### *Registered land*

7.—(1) The provisions of the law of the Territory relating to registered land apply—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) in relation to freezing orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
  - (b) in relation to applications for freezing orders, as they apply in relation to other pending land actions.
- (2) The ICC shall be treated for the purposes of those provisions as a person interested in relation to any registered land to which a freezing order or an application for a freezing order relates.
8. Omitted.

### *Bankruptcy*

9.—(1) Where a person is adjudged bankrupt in the Territory, property for the time being subject to a freezing order made before the order adjudging him bankrupt, and 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 bankrupt's estate for the purposes of the law of the Territory relating to bankruptcy.

(2) Where a person has been adjudged bankrupt in the Territory, the powers conferred on a receiver appointed under paragraph 5 above shall not be exercised in relation to—

- (a) property for the time being comprised in the bankrupt's estate for the purposes of the said law of the Territory;
- (b) property in respect of which his trustee in bankruptcy may (without the leave of the court) serve a notice under any law of the Territory for the purpose of making available as part of a bankrupt person's estate after-acquired property and tools, clothes and other items exceeding the value of their reasonable replacement, and tenancies, and
- (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under the law of the Territory in an order of the court discharging him from bankruptcy with respect to any income which may subsequently become due to him, or with respect to property devolving upon him, or acquired by him, after his discharge.

(3) Nothing in the law of the Territory relating to bankruptcy shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

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

(5) In any case in which a petition in bankruptcy was presented, or a receiving order or an adjudication in bankruptcy was made, before the date on which the present law of the Territory relating to bankruptcy came into force, this paragraph shall have effect with the substitution of such references to the law in force before that date as may be necessary.

10. Omitted.

### *Winding up*

11.—(1) Where an order for the winding up of a company has been made under the law of the Territory, or a resolution has been passed by a company for voluntary winding up under that law, 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.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(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 law of the Territory relating to bankruptcy or the winding up of companies 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 law of the Territory; and  
“relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

(5) In any case in which the winding up of a company commenced or is treated as having commenced before the date on which the present law of the Territory relating to winding up came into force, this paragraph shall have effect with the substitution of such references to the law in force before that date as may be necessary.

12. Omitted.

#### *Protection of insolvency practitioners*

13.—(1) This paragraph applies where an insolvency practitioner 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 insolvency practitioner shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence.

(3) The insolvency practitioner 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 insolvency proceedings 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 those proceedings.

(4) Sub-paragraphs (1) to (3) are without prejudice to the generality of any provision contained in the law of the Territory relating to the expenses or remuneration of an insolvency practitioner.

(5) In this paragraph “insolvency practitioner” means a person acting as such and, for the purposes of this paragraph, the question whether any person is acting as such shall be determined in accordance with sub-paragraphs (6), (7) and (8) except that the expression shall also include an Official Receiver (however styled) acting as receiver or manager of property.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (6) For the purposes of this paragraph a person acts as an insolvency practitioner in relation to a company by acting—
- (a) as its liquidator, provisional liquidator, administrator or administrative receiver, or
  - (b) as supervisor of a voluntary arrangement approved by it under the law for the time being in force in the Territory relating to the insolvency of companies.
- (7) For the purposes of this paragraph a person acts as an insolvency practitioner in relation to an individual by acting—
- (a) as his trustee in bankruptcy or interim receiver of his property, or
  - (b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors, or
  - (c) as supervisor of a voluntary arrangement proposed by him and approved under the law for the time being in force in the Territory relating to the insolvency of individuals, or
  - (d) in the case of a deceased individual to whose estate the provisions of the law for the time being in force in the Territory relating to the administration of the insolvent estates of deceased persons apply, as administrator of that estate.
- (8) References in sub-paragraph (7) to an individual include, except in so far as the context otherwise requires, references to a partnership.

#### *Interpretation*

- 14.—(1) For the purposes of this Schedule—
- (a) “property” includes money and all other property, real or personal, heritable or moveable, 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 Territory.
- (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

Omitted

## SCHEDULE 8

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

## ARTICLE 6

### GENOCIDE

For the purposes 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:

- (c) Killing members of the group;
- (d) Causing serious bodily or mental harm to members of the group;
- (e) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (f) Imposing measures intended to prevent births within the group;
- (g) 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;

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (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;
  - (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

4. 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;

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (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 personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
  - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
  - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
  - (vii) Making improper use of a flag of truce, or of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
  - (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
  - (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
  - (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
  - (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
  - (xii) Declaring that no quarter will be given;
  - (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
  - (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (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 with 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) Omitted.
  - (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy as defined in article 7, paragraph 2(f), enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
  - (xxiii) Utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
  - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
  - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - (iii) Taking of hostages;
  - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.
- (d) Paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:



*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (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 this 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 organised armed groups or between such groups.

## ARTICLE 9

### ELEMENTS OF CRIMES

5. 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.

6. Amendments to the Elements of Crimes may be proposed by:

- (a) Any State Party;

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (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.

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

## SCHEDULE 9

### OFFENCES AGAINST THE ICC: ARTICLE 70

## ARTICLE 70

### OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:

- (a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1 to tell the truth;
  - (b) Presenting evidence that the party knows is false or forged;
  - (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
  - (d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;
  - (e) Retaliating against an official of the Court on account of duties performed by that or another official;
  - (f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.
- (a) (2) (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”.

Article 2(1)

## ANNEX 2

### TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla  
Bermuda  
Cayman Islands

Falkland Islands  
Montserrat  
Pitcairn, Henderson, Ducie and Oeno Islands  
St Helena and its Dependencies  
Sovereign Base Areas of Akrotiri and Dhekelia  
Turks and Caicos Islands  
Virgin Islands  
Article 2(2)

## ANNEX 3

### FURTHER EXCEPTIONS, ADAPTIONS AND MODIFICATIONS TO INTERNATIONAL CRIMINAL COURT ACT 2001 IN RESPECT OF CERTAIN TERRITORIES

#### **(A) ANGUILLA**

1. In the application of sections (3) and 13(3) in Anguilla, the reference to “the rule-making authority” in relation to the definition of “prescribed form” shall be replaced by a reference to “the Governor”.
2. In the application of sections 7(5)(a) and 13(5)(a) in Anguilla, the reference to “prison governor” shall be deleted and replaced with “Superintendent of Prisons”.
3. In the application of section 26 in Anguilla, the reference to “competent court” shall be read to refer to the Magistrates Court.
4. In the application of section 76(1) in Anguilla, the words “which is registered in the Territory or” shall be omitted.

#### **(B) CAYMAN ISLANDS**

5. In the application of sections 7(3) and 13(3) in the Cayman Islands, the reference to “the rule-making authority” in relation to the definition of “prescribed form” shall be replaced by a reference to “the Governor”.
6. In the application of sections 7(5)(a) and 13(5)(a) in the Cayman Islands, the reference to “prison governor” shall be deleted and replaced with “Director of Prisons”.
7. In the application of section 26 in the Cayman Islands, the reference to “competent court” shall be read to refer to a court of summary jurisdiction.
8. In the application of section 76(1) in the Cayman Islands, the words “which is registered in the Territory or” shall be omitted.

#### **(C) FALKLAND ISLANDS**

9. In the application of sections 25(2) and 27(2) in the Falkland Islands, the reference to “facsimile transmission” shall also be read to include scanned and emailed documents, and the references to “originals of documents so transmitted” shall also be read to refer to the facsimile copy of the endorsed warrant which may serve as the original endorsed warrant within the Territory.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

10. In the application of sections 7(5)(a) and 13(5)(a) in the Falkland Islands, the reference to “prison governor” shall be deleted and replaced with “the officer in charge of the prison”.

#### **(D) MONTSERRAT**

11. In the application of sections 7(5)(a) and 13(5)(a) in Montserrat, the reference to “prison governor” shall be deleted and replaced with “Superintendent of Prisons”.

12. In the application of section 26 in Montserrat, the reference to “competent court” shall be read to refer to the Magistrates Court.

13. Notwithstanding the provisions to the contrary in any other law in force in Montserrat, in the application of sections 25(2) and 27(2) in Montserrat, the reference to “facsimile transmission” shall also be read to include scanned and emailed documents, and the references to “originals of documents so transmitted” shall also be read to refer to the facsimile copy of the endorsed warrant which may serve as the original endorsed warrant within the Territory.

#### **(E) PITCAIRN, HENDERSON, DUCIE AND OENO ISLANDS**

14. In the application of section 9(3) in Pitcairn, Henderson, Ducie and Oeno Islands, the “normal appellate process” shall be deemed to include a right for the Governor to appeal to the Pitcairn Court of Appeal against any decision of the Supreme Court that dismisses an appeal from the refusal of a delivery order by a competent court. Such appeal shall be brought by notice in writing lodged with the Court of Appeal in such manner as may be directed by rules of Court (or if there are no such rules then in a form approved by the Registrar) within 28 days of delivery of the decision appealed against.

15. In the application of sections 25(2) and 27(2) in Pitcairn, Henderson, Ducie and Oeno Islands, the reference to “facsimile transmission” shall also be read to include scanned and emailed documents, and the references to “originals of documents so transmitted” shall also be read to refer to the facsimile copy of the endorsed warrant which may serve as the original endorsed warrant within the Territory.

#### **(F) ST. HELENA AND DEPENDENCIES**

16. In the application of sections 7(5)(a) and 13(5)(a) in St. Helena and Dependencies, the reference to “prison governor” shall be deleted and replaced with “Superintendent of Gaols”.

#### **(G) SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA**

17. In the application of section 6(2)(a) in the Sovereign Base Areas of Akrotiri and Dhekelia the reference to “summary trial of an information against that person” shall be deleted and replaced with the following: “being tried before the Judge’s court”.

18. In the application of sections 7(5)(a) and 13(5)(a) in the Sovereign Base Areas of Akrotiri and Dhekelia, the reference to “prison governor” shall be deleted and replaced with “Superintendent of Prisons”.

19. In the application of section 53(2) in the Sovereign Base Areas of Akrotiri and Dhekelia, the reference to “triable only on indictment” shall be deleted and replaced with the following: “triable only on information before the Senior Judge’s court”.

20. In the application of paragraph 7 of Schedule 2 in the Sovereign Base Areas of Akrotiri and Dhekelia, the reference to a court shall, notwithstanding the final sentence of that paragraph, be read as applying to every court of the Sovereign Base Areas.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, made under the International Criminal Court Act 2001, extends provisions of the Act, with modifications, to the overseas territories specified in Annex 2. Certain provisions of the 2001 Act are omitted as they are not relevant to overseas territories or there is no intention that the provisions be applied there (for example, those relating to enforcement of sentences of imprisonment in Part 4 of the Act). This will enable the Rome Statute of the International Criminal Court, done at Rome on 17 July 1998, to be extended to the Overseas Territories listed in Annex 2 to this order. No Regulatory Impact Assessment has been produced in respect of this Order because it applies exclusively in the Overseas Territories concerned.