

Annex III Implementing legislation questionnaire for States Parties

1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”), or otherwise enacted legislation pertaining to the Rome Statute?

Yes. The International Criminal Court Act 2001 applies in England, Wales and Northern Ireland. The International Criminal Court (Scotland) Act 2001 applies in Scotland. And the International Criminal Court Act (Overseas Territories) Orders 2009 and 2010 apply in overseas territories

IF NOT Part A

2. What legislative or other efforts, if any, has your Government taken or initiated to implement the provisions of the Statute into national law?

3. What obstacles, if any, has your Government faced in its efforts to implement the provisions of the Statute? Has your Government managed to overcome such obstacles, and if so, how?

4. What form of assistance would benefit or has benefitted your Government’s efforts to implement the Statute?

IF YES Part B

5. In implementing the Statute, did your Government draft a stand-alone legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

Special implementing legislation was drafted.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes into domestic law?

The substantive crimes are incorporated into domestic law in the legislation, but the definitions of the crimes refer to the relevant Articles of the Rome Statute (and these Articles are annexed to the legislation in a Schedule).

7. Does the implementing legislation incorporate the following aspects of cooperation with the Court and if yes, how?

(a) Arrest and surrender;

Yes, section 2 of the ICC Act 2001 sets out the procedure to be followed when the UK Government receives a request from the ICC for the arrest and surrender of an individual. This could be someone suspected of having committed an ICC crime or someone who has already been convicted by the ICC but escaped custody in another country. The following subsections are of particular relevance to this question:

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2(1) requires the Secretary of State to transmit the request and the accompanying documents to an appropriate judicial officer (as defined in section 26 of the Act).

2 (3) requires the judicial officer to endorse an arrest warrant provided he is satisfied that it appears to have been issued by the ICC.

2(4) Requires the judicial officer to issue an arrest warrant himself if a request is received without an arrest warrant but is accompanied by the other documents specified in Article 91.3 of the Rome Statute.

(b) Interim release and release of persons (acquittal, non-confirmation of charges, etc);

Yes. Sections 19 and 20 provide for two different situations in which a person arrested may be discharged.

Section 19 grants a person subject to a delivery order the right to make an application for discharge if he has not been delivered up within 40 days of the order being made. The High Court, or High Court of Justiciary in Scotland, is required to order discharge if reasonable cause is not shown for the delay; this is to ensure that the right not to be subject to unnecessarily prolonged detention is respected.

Section 20 provides that a person must be discharged if the ICC informs the Secretary of State that the person's surrender is no longer required.

(c) Cooperation with OTP investigations;

Yes – there are provisions enabling various types of co-operation:

Sections 2 – 26 set out provisions enabling the UK arrest of persons and their delivery to the ICC.

Sections 27 – 36 set out other forms of assistance the UK may provide, including questioning of persons being investigated, taking or producing evidence, transfer of prisoners to give evidence or otherwise assist with investigations, orders for exhumation and provision of records and other documents.

(d) Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes;

Yes. Sections 37 and 38 provide for UK assistance to the ICC in investigating the proceeds of crime.

Section 37 provides that, where the ICC requests assistance in ascertaining whether a person has benefited from an ICC crime or in identifying property derived from an ICC crime, the Secretary of State may direct a police officer (i.e. a policy officer) to apply for an order or warrant under Schedule 5.

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Section 38 provides that, where the ICC requests assistance in the freezing or seizure of property for possible forfeiture, the Secretary of State may direct a person to apply for a freezing order in accordance with the provisions of Schedule 6.

(e) Enforcement of sentences;

Yes.

Part 4 provides for the enforcement of ICC sentences and orders made following conviction. The sentences and orders are of two different types. A State Party is obliged to implement orders for fines, forfeitures and reparations that the ICC may make against a convicted person. However, a State Party is not obliged to accept persons convicted by the ICC ("ICC prisoners") to serve their sentences in its prisons. Instead, under Article 103.1, a State may indicate to the ICC its willingness to accept ICC prisoners and can attach conditions to its acceptance. Once the ICC hands down a prison sentence and that sentence is no longer subject to appeal, the ICC will designate a State of enforcement among those States who have volunteered and the State shall inform the ICC if it accepts that designation.

Section 42 applies where the Secretary of State has accepted the designation by the ICC of the UK as the State of enforcement with regard to a specific person. Under *subsection (2)* he will consult with the Scottish Ministers if he considers it may be appropriate for the person to serve his sentence in Scotland. The relevant Minister – the Secretary of State or, in Scotland, the Scottish Ministers – will then issue a warrant authorising the person to be brought to the relevant part of the UK. The Secretary of State's warrant will authorise the detention of the prisoner in England, Wales or Northern Ireland. The International Criminal Court (Scotland) Bill introduced in the Scottish Parliament on 4 April 2001 provides that the warrant issued by the Scottish Ministers under this section will authorise the detention of the prisoner in Scotland.

Subsection (4) provides that where the prisoner is detained in England, Wales or Northern Ireland, he shall be treated in the same way as a domestic prisoner serving a sentence of imprisonment imposed by a court in that part of the UK for a similar offence. The conditions of the ICC prisoner's detention are to be the same as those for domestic prisoners, except that, by virtue of Schedule 7, the domestic provisions concerned with the early release of prisoners or which affect the length of sentence are disapplied. Articles 105 and 110 of the Statute make clear that consideration of early release or reduction in sentence will be a matter for the ICC alone. If the ICC itself subsequently amends the sentence imposed on the person, *subsection (3)* enables the domestic warrant to be amended accordingly.

(f) Witness protection;

This section extends the protections currently afforded to victims and witnesses of sexual offences under the Sexual Offences (Amendment) Acts 1976 and 1992, Chapters 1 to 3 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 and the Sexual Offences (Protected Material) Act 1997 to victims and witnesses in

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proceedings brought under this Act. Such protections include the entitlement to anonymity, restrictions on the freedom of defendants to cross-examine their alleged witnesses personally and restrictions on what evidence about an alleged victim's sexual behaviour can be considered relevant in a trial. These protections will apply when a prosecution under this Act relates to conduct amounting to the criminal offences specified in those Acts as attracting such protections. So, for example, where an individual is prosecuted for a crime against humanity under section 51 that involves a rape, the alleged victim will be entitled to all the protections that would have been afforded to her under the specified statutory provisions had the defendant been prosecuted for rape rather than for a crime against humanity.

(g) Other forms of cooperation (see in particular article 93 of the Rome Statute).

Section 32 enables implementation of an ICC request under Article 93.7 of the Rome Statute (the power to request the temporary transfer of a person in custody for purposes of identification or for obtaining testimony or other assistance. The person may be transferred only if she gives her consent, and shall remain in custody and be returned without delay when the purposes of the transfer have been fulfilled.) Section 32 provides that the person will remain in custody during his transfer to the ICC, that any time spent at the ICC will be counted towards the completion of their domestic sentence, and if she has yet to complete that sentence, she will be returned to the UK to do so.

8. Does the implementing legislation designate a channel of communication with the Court?

No.

9. Does the implementing legislation create a central national authority or designate a national focal point for cooperation with the Court?

No. However, the UK Central Authority (UKCA) in the Home Office has been designated as the national focal point for all ICC matters.

10. Does the implementing legislation provide for the privileges and immunities of the Court? (See in particular article 48 of the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court)

Paragraph 1, Schedule 1 of the Act enables subordinate legislation to be made to confer privileges and immunities on the ICC, the judges and other persons connected with the Court, in accordance with the obligations under Article 48 of the Statute and any other relevant international agreements entered into by the UK. The Agreement on Privileges and Immunities of the International Criminal Court has been implemented domestically in two pieces of secondary legislation - The International Criminal Court (Immunities and Privileges) (No. 1) Order 2006; and The International Criminal Court (Immunities and Privileges) (No. 2) Order 2006.

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11. What obstacles, if any, did your Government face in its efforts to implement the provisions of the Statute? How did your Government manage to overcome such obstacles?

None

12. Did your Government benefit from any form of assistance in the process of implementing the Statute?

No

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