International Criminal Court Act 2001

2001 CHAPTER 17

PART 2

ARREST AND DELIVERY OF PERSONS

Proceedings on request

2 Request for arrest and surrender

(1) Where the Secretary of State 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) If it appears to the Secretary of State that the request should be considered by an appropriate judicial officer in Scotland, he shall transmit the request and the documents accompanying it to the Scottish Ministers who shall transmit them to an appropriate judicial officer.

(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 United Kingdom.

(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".

3 Request for provisional arrest

(1) This section applies where the Secretary of State 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 Secretary of State that application for a warrant should be made in England and Wales—

(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 United Kingdom,

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

(3) If it appears to the Secretary of State that application for a warrant should be made in Scotland—

(a) he shall transmit the request to the Scottish Ministers who shall instruct the procurator fiscal to apply for a warrant for the arrest of that person, and

(b) on the application by the procurator fiscal, which shall state—

(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, Scotland,

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

(4) Where an appropriate judicial officer issues a warrant under this section, he shall notify the Secretary of State and, where the proceedings are in Scotland, the Scottish Ministers that he has done so.

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

4 Dealing with person arrested under provisional warrant

(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) Provision shall be made by Order in Council under paragraph 3 of Schedule 1 (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,

having regard to the time limits specified in Rules of Evidence and Procedure for the purposes of article 92.3.

(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.

5 Proceedings for delivery order

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

(2) If the competent court 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,

it shall make a delivery order.

(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 Secretary of State.

(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 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 court shall apply the principles which would be applied on an application for judicial review.

(8) If the 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 or declarator to that effect, but may not grant any other relief.

(9) The court shall notify the Secretary of State (and, where the proceedings are in Scotland, the Scottish Ministers) of any declaration or declarator under subsection (8) and the Secretary of State shall transmit that notification to the ICC.

6 Supplementary provisions as to proceedings before competent court

(1) The following provisions apply in relation to proceedings before a competent court under section 5.

(2) In the case of proceedings in England and Wales—
(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;
(c) the proceedings are criminal proceedings for the purposes of Part 1 of the Access to Justice Act 1999 (c. 22) (advice, assistance and representation);
(d) section 16(1)(c) of the Prosecution of Offences Act 1985 (c. 23) (defence costs on dismissal of proceedings) applies, reading the reference to the dismissal of the information as a reference to the discharge of the person arrested.

(3) In the case of proceedings in Scotland—
(a) the court has the like powers, including power to adjourn the case and meanwhile to remand the person whose surrender is sought, and the proceedings shall be conducted as nearly as may be in the like manner, as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by that person;
(b) the provisions of the Legal Aid (Scotland) Act 1986 (c. 47) relating to such proceedings, or any appeal proceedings following thereon, apply to that person.

7 Consent to surrender

(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 justice of the peace or, in Scotland, a sheriff.

The "prescribed form" means that prescribed by rules under section 144 of the Magistrates' Courts Act 1980 (c. 43) or, in Scotland, by the High Court of Justiciary by Act of Adjournal.

(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 England and Wales, 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.