
STATUTORY INSTRUMENTS

2018 No. 187

The United Nations (International Residual
Mechanism for Criminal Tribunals) Order 2018

PART 2

ARREST AND DELIVERY OF PERSONS TO THE MECHANISM

Endorsement of warrants of arrest

4.—(1) Where the Secretary of State receives from the Mechanism a warrant of arrest issued by the Mechanism (including such a warrant issued or received before the commencement of this Order), the Secretary of State must transmit the warrant to an appropriate judicial officer.

(2) If the Secretary of State considers that the warrant of arrest should be endorsed by an appropriate judicial officer in Scotland, he must transmit the warrant and the documents accompanying it to the Lord Advocate who must transmit them to an appropriate judicial officer.

(3) Subject to paragraph (4), the appropriate judicial officer must endorse the warrant for execution in any part of the United Kingdom.

(4) The appropriate judicial officer must not endorse a warrant for the arrest of a person (“P”) convicted by the Mechanism unless the purpose of the arrest is to enable P—

- (a) to be brought before the Mechanism; or
- (b) to be taken to a place where P is to undergo imprisonment under a sentence of the Mechanism.

Provisional warrants of arrest

5.—(1) Where the Secretary of State—

- (a) receives a request from the Mechanism for the arrest of a person (“P”) who is suspected or accused of having committed a Mechanism crime; and
- (b) the request is not accompanied by a warrant but is made on the grounds of urgency,

the Secretary of State must transmit the request to a constable and direct the constable to apply for a warrant for the arrest of P.

(2) An appropriate judicial officer may issue a warrant (“a provisional warrant”) for the arrest of P on an application by a constable stating on oath that the constable has reason to believe—

- (a) that a request has been made on grounds of urgency by the Mechanism for the arrest of P who is suspected or accused of having committed a Mechanism crime;
- (b) that P is in or on the way to the United Kingdom; and
- (c) that the purpose of the arrest is to enable P to be brought before the Mechanism.

(3) If a provisional warrant is issued, the appropriate judicial officer must notify the Secretary of State.

(4) In the application of paragraphs (1), (2) and (3) to Scotland, the following modifications have effect—

- (a) the request by the Mechanism must be transmitted to a procurator fiscal who shall apply for a warrant;
- (b) an application for a warrant must be made by the procurator fiscal and must be supported by information as respects the matters specified in paragraph (2).

(5) A person (“Q”) arrested under a provisional warrant must be brought before a competent court as soon as practicable, and—

- (a) if an endorsed warrant in respect of Q is produced to the court, the court must proceed as if P had been arrested under that warrant, and article 6 applies accordingly;
- (b) if a transfer order is produced to the court, the court must deal with Q in accordance with article 6(4) to (9); and
- (c) if no such warrant or order is produced, the court may, pending the production of such a warrant or order, remand Q for not more than 18 days at a time, provided that the total period of remands does not exceed 40 days in all.

(6) If at any time an endorsed warrant relating to a person (“R”) remanded under article 5(c) is produced to the court which remanded R, the court must determine the period of remand and R must thereafter be treated as if arrested at that time under the endorsed warrant.

(7) If an endorsed warrant or transfer order relating to a person (“S”) remanded under article 5(c) is not produced to the court which remanded S within the period of S’s remand (including any extension of that period), S must be discharged by the court.

Proceedings before competent court after arrest

6.—(1) As soon as practicable after a person (“P”) is arrested under an endorsed warrant, P must be brought before a competent court, and (subject to paragraph (6)) the court must make the appropriate order and remand P until it is executed.

(2) Where the purpose of the arrest is to enable P to be brought before the Mechanism, the appropriate order is that P be delivered up into the custody of the Mechanism in accordance with arrangements made by the Secretary of State with the Registrar.

(3) Where the purpose of the arrest is to enable P to be taken to a place to undergo trial in accordance with a referral of the Mechanism under article 6 of the Statute, or imprisonment under a sentence of the Mechanism, the appropriate order is that P be delivered up into the custody of the state in which that place is situated, in accordance with arrangements made by the Secretary of State with that state.

(4) Where, in the case of a person (“Q”) arrested under a provisional warrant, a transfer order is produced to the court, (subject to paragraph (6)) the court must—

- (a) order that Q be delivered up into the custody of the Mechanism in accordance with arrangements made by the Secretary of State with the Registrar; and
- (b) remand Q until it is executed.

(5) If it is shown to the satisfaction of the competent court that other criminal proceedings (not being proceedings under the Extradition Act 2003⁽¹⁾) have been instituted in respect of the arrested person in a national court and that those proceedings—

(1) 2003 c. 41. Section 21 as amended by the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), Schedule 11(4), paras. 105(2) and (3), and both section 21 and section 92, as amended by the Police and Justice Act 2006 (c.48), Schedule 13(1), para. 16(2); the Constitutional Reform Act 2005 (c. 4), section 40(4) and Schedule 9, paragraph 81, the Police and Justice Act 2006 (c. 48), section 42 and Schedule 13, paragraphs 1-3, 5, 8, 13-19, 25-26, the Policing and Crime Act 2009 (c.26), sections 70, 71, 73-76, 78, the Crime and Courts Act 2013 (c. 22), section 50 and Schedule 20, paragraphs 4-6, 10-13, 15,

- (a) have not been finally determined so far as they relate to conduct which would not constitute a Mechanism crime; or
- (b) have not been discontinued (whether in pursuance of this Order or otherwise) so far as they relate to conduct which would constitute a Mechanism crime,

the proceedings under this article must be adjourned and the competent court may remand the arrested person until the other criminal proceedings have been finally determined or have been discontinued.

(6) An order must not be made under paragraph (1) or (4) if it is shown to the satisfaction of the competent court—

- (a) that the document purporting to be a warrant or transfer order issued by the Mechanism is not such a warrant or order or, in the case of a warrant, that it has not been endorsed in accordance with article 4;
- (b) that the person brought before the court is not the person named or described in the warrant or transfer order;
- (c) where the person has not been convicted by the Mechanism of the offence specified in the warrant, transfer order or any accompanying document, that the offence is not a Mechanism crime; or
- (d) notwithstanding that the offence is a Mechanism crime, that the person would if charged with it in the United Kingdom not be prosecuted or convicted due to the operation of any rule of law relating to previous acquittal or conviction.

(7) If the competent court refuses to make an order under paragraph (1) or (4), it must make an order remanding the person arrested (“R”) until the Secretary of State, or in the case of proceedings in Scotland the Lord Advocate, has been notified of its decision and of the grounds for it; and—

- (a) if the Secretary of State or the Lord Advocate, on being so notified immediately informs the court that it is intended to question the decision on the ground that it is wrong in law, the order remanding R continues to have effect so long as the case is pending; or
- (b) if the court is not so informed, R must be released.

(8) Nothing in this Order requires a competent court to be satisfied that there is evidence sufficient to warrant the trial of an accused person by the Mechanism.

(9) Where a competent court makes an order under paragraph (1) or (4) in respect of a person (“S”)—

- (a) who has been remanded under section 21(4), 21A(6) or 92(4) of the Extradition Act 2003; or
- (b) in respect of whom an order, other than a sentence of imprisonment or detention, has been made in criminal proceedings which have been finally determined,

it may make such other order as is necessary to give effect to the endorsed warrant or transfer order; and such other order may suspend or revoke a warrant, sentence (not being a sentence of imprisonment or detention) or other order made by that or any other court or any magistrate or other judicial officer in respect of S.

Statement of case by competent court

7.—(1) If a competent court refuses to make a delivery order in relation to a person under article 6, the Secretary of State may question the decision on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court on the question of law involved.

- (2) The following provisions have effect with respect to an application made under paragraph (1)
- (a) the application must be made within the period of 21 days following the day on which the order was refused unless the court allows a longer period;
 - (b) the application must be made in writing and identify the question or questions of law on which the opinion of the High Court is sought;
 - (c) within 21 days after receipt of the application the clerk of the court must send a draft stated case to the applicant and to the person to whom the warrant relates (“P”) or P’s solicitor and must allow each party 21 days from the date of the sending of the draft stated case within which to make representations to it;
 - (d) within 21 days after the latest day on which such representations may be made the court must, after considering any such representations and making such adjustments, if any, to the draft case as it thinks fit, state and sign the case and the clerk must send the case to the applicant and send a copy of the case to P or P’s solicitor.
- (3) If the court fails to state and sign a case within the period required by paragraph (2), the High Court may, on the application of the Secretary of State, make an order requiring it to do so.
- (4) The High Court has power—
- (a) to remit the case to the competent court to decide it in accordance with the opinion of the High Court on the question of law, or
 - (b) to dismiss the application.
- (5) If the High Court dismisses the application, the Secretary of State may, with the leave of the High Court or the Supreme Court, appeal to the Supreme Court; and section 1 of the Administration of Justice Act 1960(2) (appeal to the Supreme Court) applies in relation to the appeal with the omission of so much of subsection (2) as restricts the grant of leave to appeal.
- (6) An order for the remand of an arrested person which continues to have effect under article 6(7)(a) ceases to have effect if—
- (a) an application under paragraph (1) is not made by the Secretary of State within the period specified in paragraph (2)(a);
 - (b) the High Court dismisses the application and the Secretary of State does not immediately either apply for leave to appeal to the Supreme Court or inform the High Court that he or she intends to apply for leave; or
 - (c) the Supreme Court refuses leave to appeal or dismisses the appeal.

Statement of case in Scotland

8.—(1) In the application of this Order to Scotland, article 7 is omitted and the provisions of this article have effect.

(2) If a competent court refuses to make a delivery order in relation to a person under article 6, the Lord Advocate may question the decision on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court of Justiciary on the question of law involved.

- (3) The following provisions have effect with respect to an application under paragraph (2)—
- (a) the application must be made within the period of 21 days following the day on which the order was refused unless the court allows a longer period;

(2) 1960 c. 65, as amended by the Criminal Appeal Act 1968 (c. 19), section 54 and Schedule 7, the Access to Justice Act 1999 (c. 22), section 63(1), the Courts Act 2003 (c. 39), sections 88(3) and 110(1), and the Constitutional Reform Act 2005 (c. 4), sections 40(4) and Schedule 9, Part 1, para. 13, 146(1) and 148(1). There have been other amendments not relevant to this Order.

- (b) the application must be made in writing and identify the question or questions of law on which the opinion of the High Court of Justiciary is sought;
 - (c) the appropriate judicial officer shall within 21 days after receipt of the application, prepare a draft stated case, and the sheriff clerk must forthwith send the draft to the applicant and to the person to whom the warrant relates (“P”) or P’s solicitor and must allow each party 21 days from the date of the sending of the draft stated case within which to lodge and intimate proposed adjustments;
 - (d) within one week after the latest date on which adjustments may be lodged the appropriate judicial officer must, on the motion of either party, or may, of the appropriate judicial officer’s own accord, hear parties on any such adjustments;
 - (e) within two weeks after the latest day on which such hearing on adjustments may take place (or, if there are no such adjustments, within two weeks after the latest date by which such adjustments could have been lodged) the appropriate judicial officer must, after considering any such proposed adjustments and representations, state and sign the case and the sheriff clerk must—
 - (i) forthwith submit the case, along with the application for the case and all other documents in the case, to the Clerk of Justiciary, and
 - (ii) send a copy of the case to the applicant and to P or P’s solicitor;
 - (f) if any period specified in the foregoing provisions of this paragraph expires on a Saturday, Sunday or a court holiday prescribed for the competent court, the period is to be extended to expire on the next day which is not a Saturday, Sunday or such holiday.
- (4) If the appropriate judicial officer fails to state and sign a case within the period required by paragraph (3), the High Court of Justiciary may, on the application of the Lord Advocate make an order requiring it to do so.
- (5) A stated case under this article shall be heard by the High Court of Justiciary on such date as it may fix.
- (6) The High Court of Justiciary has power—
- (a) to remit the case to the competent court to decide it in accordance with the opinion of the High Court of Justiciary on the question of law, or
 - (b) to affirm the decision of the competent court.
- (7) An order for the remand of an arrested person which continues to have effect under article 6(7) ceases to have effect if—
- (a) an application under paragraph (2) is not made by the Lord Advocate within the period mentioned in paragraph (3)(a), or
 - (b) an application to the High Court of Justiciary is disposed of pursuant to paragraph (6)(b).

Securing attendance of person as witness or to assist in investigations

9.—(1) This article applies where the Secretary of State receives from the Mechanism an order for the attendance before the Mechanism of a person in the United Kingdom who—

- (a) has been served with a summons or other process under article 24 requiring that person to appear before the Mechanism for the purposes of giving evidence or assisting an investigation or for both; and
- (b) has failed to comply with the process,

and the order is accompanied by a request for assistance in enforcing it.

(2) The Secretary of State must transmit the order to an appropriate judicial officer, who must issue a warrant for the arrest of the person named or described in the order.

(3) If it appears to the Secretary of State that the order should be considered by an appropriate judicial officer in Scotland, he must transmit the order and the documents accompanying it to the Lord Advocate who must transmit them to an appropriate judicial officer who must issue a warrant for the arrest of the person named or described in the order.

(4) A person arrested in pursuance of a warrant issued under paragraph (2) or (3) (“P”) must be brought before a competent court as soon as practicable.

(5) If the competent court is satisfied that—

- (a) P is the person named or described in the warrant and in the order of the Mechanism;
- (b) P has been served with a summons or other process under article 24 requiring P to appear before the Mechanism; and
- (c) P has failed to comply with the process,

the court must order P to be delivered up, in accordance with arrangements made by the Secretary of State with the Registrar, into the custody of the Mechanism and must remand P until the order has been executed.

(6) If the competent court does not make an order under paragraph (5) and P is not remanded, the court must order P’s discharge.

Transfer of prisoner to give evidence or assist in investigations

10.—(1) This article applies where the Secretary of State receives a request from the Mechanism for the transfer of a prisoner (“P”) into the custody of the Mechanism for the purposes of giving evidence or assisting an investigation or for both.

(2) If P consents to the transfer, the Secretary of State must issue a warrant requiring P to be delivered up, in accordance with arrangements made by the Secretary of State with the Registrar, into the custody of the Mechanism.

(3) The consent of P for the purposes of paragraph (2) may be given either—

- (a) by P; or
- (b) in circumstances in which it appears to the Secretary of State inappropriate, because of the physical or mental condition or youth of P, for P to act for himself or herself, by a person appearing to the Secretary of State to be an appropriate person to act on P’s behalf.

(4) Consent given for the purposes of paragraph (2) may not be withdrawn after the issue of the transfer warrant.

(5) If P, or the person acting on P’s behalf, refuses consent to the transfer (including in cases where P has given consent but then withdrawn that consent before the issue of a transfer warrant), P must be brought before a competent court as soon as practicable.

(6) If the competent court is satisfied that P is the person named or described in the request of the Mechanism, the court must order P to be delivered up, in accordance with arrangements made by the Secretary of State with the Registrar, into the custody of the Mechanism.

(7) If an order is made under paragraph (6), P must be remanded until it has been executed; and if no such order is made P must be transferred in custody to the place where P is liable to be detained under the sentence to which P is subject.

(8) This article applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner and a reference in this article to a sentence is to be construed accordingly.

(9) In the application of this article to Scotland, the following modifications have effect—

- (a) paragraphs (2), (3) and (4) are omitted;
- (b) the Secretary of State must transmit the request to the Scottish Ministers;

- (c) if P consents to the transfer, the Scottish Ministers must issue a warrant requiring P to be delivered up, in accordance with arrangements made by the Secretary of State with the Registrar, into the custody of the Mechanism;
- (d) the consent of P for the purposes of subparagraph (c) may be given either—
 - (i) by P; or
 - (ii) in circumstances in which it appears to the Scottish Ministers inappropriate, because of the physical or mental condition or youth of P, for P to act for himself or herself, by a person appearing to the Scottish Ministers to be an appropriate person to act on P's behalf;
- (e) consent given for the purposes of subparagraph (c) may not be withdrawn after the issue of the transfer warrant.

Review of orders of competent court

11.—(1) Where a delivery order is made by a competent court in respect of any person (“P”)—

- (a) P must not be delivered up under the order until the expiration of the period of 15 days beginning with the date on which the order is made (“the specified period”), unless P gives notice in accordance with paragraph (5) that P consents to being delivered up before the expiration of that period; and
- (b) the competent court must inform P of the effect of sub-paragraph (a) and of P's right to apply for a writ of *habeas corpus ad subjiciendum* or, in the case of an order made in Scotland, to make an application for review under paragraph (3) within the specified period.

(2) If, before the expiration of the specified period, an application is made by P or on P's behalf for a writ of *habeas corpus ad subjiciendum* or, in the case of an order made in Scotland, an application is made by P pursuant to paragraph (3), P must not be delivered up while proceedings on the application are pending.

(3) A delivery order made by the competent court in Scotland may be reviewed by the Sheriff Appeal Court in the same manner as an appeal against a summary conviction.

(4) For the purposes of paragraph (2), proceedings on an application under or referred to in that paragraph are to be treated as pending until an appeal in those proceedings is disposed of, and an appeal is to be treated as disposed of at the expiration of the time within which the appeal may be brought or, where leave to appeal is required, within which the application for leave may be made, if not brought or made within that time.

(5) Where P gives notice consenting to delivery up before the expiration of the specified period—

- (a) the notice must be signed in the presence of a justice of the peace or, in Scotland, of a sheriff or justice of the peace, or, in Northern Ireland, a lay magistrate;
- (b) a notice given by a person in custody must be delivered to the governor of the prison;
- (c) a notice given by a person on bail must be delivered to the police officer in charge of the police station specified in his recognisance or in Scotland to the sheriff clerk; and
- (d) the delivery of a notice given by a person on bail is effective if the notice is sent by post in a registered letter or by recorded delivery service addressed to the appropriate person specified in sub-paragraph (c).

(6) It is the duty of the appropriate person specified in sub-paragraph (c) receiving any such notice to ensure that the notice is attached to the order for the delivery up of the person concerned.

Remand and bail

12.—(1) Where by virtue of this Order a court has power to remand a person (“P”) the proceedings must for the purposes of section 4 of the Bail Act 1976(3) (general right to bail) be treated as extradition proceedings as defined in section 2(2) of that Act, and the court may—

- (a) remand P in custody, that is to say, commit P for the period of the remand to prison or the custody of a constable; or
- (b) if it is satisfied that there are no substantial grounds for believing that P, if released on bail, would fail to surrender to custody, remand P on bail in accordance with the Bail Act 1976, that is to say, direct P to surrender himself or herself into the custody of the officer in charge of a specified police station at the time to be appointed by that officer and notified in writing to P,

but nothing in this paragraph authorises the remand on bail of a person who is serving a term of imprisonment or detention to which he or she has been sentenced by a national court.

(2) Where the release on bail of a person (“Q”) is conditional on P providing one or more surety or sureties and, in accordance with section 8(3) of the Bail Act 1976, the court fixes the amount in which the surety is to be bound with a view to Q entering into his or her recognisance subsequently in accordance with subsections (4) and (5), or subsection (6) (as appropriate) of that section the court must in the meantime commit Q to the custody of a constable.

(3) The time to be appointed for the purposes of paragraph (1)(b) must not be more than 24 hours before the time at which it appears to the officer in charge of the police station that the period of remand is likely to end.

(4) During the period between the surrender of a person (“R”) and the end of the period of remand, R must be treated as committed to the custody of the constable; but where it appears to the officer to whom R surrenders that the end of the period of remand will be unexpectedly delayed—

- (a) the officer must grant R bail in accordance with the Bail Act 1976 subject to a duty to surrender himself or herself into the custody of the officer in charge of the police station specified under paragraph (1)(b) at the time to be appointed by that officer and notified in writing to R, and
- (b) the time to be appointed for that purpose must not be more than 24 hours before the time at which it appears to the officer that the period of remand is likely to end.

(5) If a person (“S”) fails to surrender at the time appointed for the purposes of paragraph (1) (b) or (4)(a)—

- (a) the court by which S was remanded may issue a warrant for S’s arrest; and
- (b) on S’s arrest under that warrant, paragraph (4) applies as if S had surrendered to the officer in charge of the police station specified under paragraph (1)(b), but that officer must not grant P bail unless he or she is satisfied that it is proper to do so.

(6) This article does not apply to Scotland.

Discharge of persons not delivered up

13.—(1) Where the Mechanism informs the Secretary of State that a person arrested (“P”) in pursuance of this Order is no longer required to be delivered up into its custody or, as the case may be, into the custody of a state for the purposes of undergoing trial or imprisonment there—

(3) 1976 c. 63. Section 4 is amended by the Magistrates’ Courts Act 1980 (c. 43), section 154(1) and Schedule 7, para. 145, the Criminal Justice Act 1991 (c. 53), section 100 and Schedule 11, para. 21, and the Extradition Act 2003 (c. 41), section 198(5). Section 2(2), as amended by the Extradition Act 2003 (c. 41), section 198(3). Section 8, as amended by the Courts Act 2003 (c.39), Schedule 8, para. 186(2), Schedule 10, para. 1, and the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013/602, Schedule 2(1), para. 13.

- (a) the Secretary of State must notify an appropriate judicial officer; and
- (b) the appropriate judicial officer must make an order for the discharge of P.

(2) If a person (“Q”) in respect of whom a delivery order has been made is not delivered up under the order within 40 days after it was made, a superior court exercising jurisdiction in the part of the United Kingdom in which it was made, upon application by or on behalf of Q, may order Q to be discharged unless reasonable cause is shown for the delay.

(3) In paragraph (2), “superior court” means the High Court or, in Scotland, the High Court of Justiciary.

(4) The Secretary of State must revoke a transfer warrant or delivery order if, before it has been executed, the Secretary of State is informed that the Mechanism no longer requires the attendance of the prisoner to whom the warrant or order relates.

(5) In the application of this Article to Scotland, the following modifications have effect—

- (a) paragraphs (1) and (4) are omitted;
- (b) where the Mechanism informs the Secretary of State that a person arrested (“R”) in pursuance of this Order is no longer required to be delivered up into its custody or, as the case may be, into the custody of a state for the purposes of undergoing trial or imprisonment there—
 - (i) the Secretary of State must notify the Lord Advocate;
 - (ii) the Lord Advocate must notify an appropriate judicial officer; and
 - (iii) the appropriate judicial officer must make an order for the discharge of R;
- (c) the Scottish Ministers must revoke a transfer warrant or delivery order if, before it has been executed, the Scottish Ministers are informed that the Mechanism no longer requires the attendance of the prisoner to whom the warrant or order relates.