

SCHEDULES

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).

Criminal proceedings in England and Wales or Northern Ireland

- 2 (1) Where—
- (a) the Secretary of State 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 England and Wales or Northern Ireland,
- the Secretary of State 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 Secretary of State—
- (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 Secretary of State 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.

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Criminal proceedings in Scotland

- 3 (1) Where—
- (a) the Secretary of State 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 Scotland,
- the Secretary of State shall inform the Scottish Ministers of the request and they shall inform the court.
- (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 Secretary of State shall consult the ICC before giving directions for the execution of the order.

Proceedings before service court

- 4 (1) Where—
- (a) the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person, and
 - (b) proceedings against that person are pending or in progress before a service court,
- the Secretary of State 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 proceedings before a service court are still pending or in progress, the Secretary of State—
- (a) shall consult the ICC before giving directions for the execution of the delivery order, and
 - (b) may direct that the proceedings before the service court shall be discontinued.
- (4) Where the Secretary of State directs that proceedings before a service court shall be discontinued, the court 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 proceedings before a service court in respect of an offence does not prevent the institution of fresh proceedings in respect of the offence.

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

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(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 Secretary of State—

(a) in accordance with arrangements made by the Secretary of State 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 Secretary of State 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) In the application of sub-paragraph (3) where the prisoner is liable to be detained in Scotland—

(a) the reference to the custody of the Secretary of State shall be read as a reference to the custody of the Scottish Ministers, and

(b) the Secretary of State shall consult the Scottish Ministers before making any such arrangements as are mentioned in paragraph (a) or (b).

- (5) In this paragraph “prisoner” means—

(a) a person serving a sentence in a prison or other institution to which the Prison Act 1952 (c. 52), the Prisons (Scotland) Act 1989 or the Prisons Act (Northern Ireland) 1953 applies, or

(b) a person serving a sentence of detention or imprisonment 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).