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STATUTORY INSTRUMENTS

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**1998 No. 2251**

**UNITED NATIONS**

**The High Court of Justiciary (Proceedings in  
the Netherlands) (United Nations) Order 1998**

*Made* - - - - *16th September 1998*  
*Laid before Parliament* *17th September 1998*  
*Coming into force* - - *18th September 1998*

At the Court at Heathrow, the 16th day of September 1998

Present,

The Queen's Most Excellent Majesty in Council

Whereas under Article 41 of the Charter of the United Nations the Security Council of the United Nations has, by a resolution adopted on 27th August 1998, called upon Her Majesty's Government in the United Kingdom to take certain actions to facilitate the conducting of criminal proceedings under Scots law in the Netherlands:

Now therefore, Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946(1), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered:—

**Citation and commencement**

1. This Order may be cited as the High Court of Justiciary (Proceedings in the Netherlands) (United Nations) Order 1998 and shall come into force on 18th September 1998.

**Interpretation**

2.—(1) In this Order, the following expressions have, except where otherwise expressly provided, the meanings hereby assigned to them, that is to say—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(2);

“Lord Commissioner of Justiciary” includes a person appointed under—

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(1) 1946 c. 45.  
(2) 1995 c. 46.

- (a) section 22 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985<sup>(3)</sup> (re-employment of retired judges); or
- (b) section 35(3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(4)</sup> (temporary judges);

“premises of the court” means any premises in the Netherlands made available by the Government of the Netherlands for the purposes of proceedings conducted by virtue of this Order; and

“proceedings” includes anything which requires to be done or may be done in relation to proceedings by any person at any time.

(2) Expressions used in this Order and the 1995 Act have the meaning assigned to them by that Act.

### **Proceedings before High Court of Justiciary in the Netherlands**

3.—(1) For the purpose of conducting criminal proceedings on indictment against Abdelbaset Ali Mohmed Al Megrahi and Al Amin Khalifa Fhimah (in this Order referred to as “the accused”) on the charges of conspiracy to murder, murder and contravention of the Aviation Security Act 1982<sup>(5)</sup> specified in the petition upon which warrant for arrest was issued by the Sheriff of South Strathclyde, Dumfries and Galloway on 13th November 1991, the High Court of Justiciary may, in accordance with the provisions of this Order, sit in the Netherlands.

(2) Except as provided for in this Order, proceedings before the High Court of Justiciary sitting in the Netherlands shall be conducted in accordance with the law relating to proceedings on indictment before the High Court of Justiciary in Scotland.

### **Initiation of proceedings conducted by virtue of this Order**

4.—(1) The Lord Advocate may give a notice under this article to the Lord Justice Clerk where it appears to him that both of the accused are present in the Netherlands.

(2) On receipt of a notice given by the Lord Advocate under paragraph (1) above the Lord Justice Clerk shall forthwith direct that, in respect of the proceedings against the accused and subject to articles 6 and 14 of this Order, the High Court of Justiciary shall sit in the Netherlands at the premises of the court.

(3) Without prejudice to paragraph (4) below, a notice given or a direction made under this article shall not be called in question otherwise than in the proceedings for which a court shall have been constituted under article 5 of this Order.

(4) Where the Lord Advocate withdraws a notice under paragraph (1) above by a further notice to the Lord Justice Clerk, the Lord Justice Clerk shall withdraw any direction he has made.

(5) Anything which the Lord Justice General requires, or has power, to do in relation to criminal proceedings shall, in relation to proceedings conducted by virtue of this Order, be done by the Lord Justice Clerk.

### **Constitution of court**

5.—(1) After he has made a direction under article 4 of this Order, the Lord Justice Clerk shall appoint three Lords Commissioners of Justiciary to constitute a court for the purposes of any trial to be held in the course of proceedings to be conducted by virtue of this Order, and shall nominate one of them to preside.

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(3) 1985 c. 73.  
(4) 1990 c. 40.  
(5) 1982 c. 36.

(2) The determination of any question of law arising in any such trial shall be according to the votes of the majority of the members of the court, including the presiding judge.

(3) The court shall conduct any such trial without a jury.

(4) For the purposes of any such trial, the court shall have all the powers, authorities and jurisdiction which it would have had if it had been sitting with a jury in Scotland, including power to determine any question and to make any finding which would, apart from this article, be required to be determined or made by a jury, and references in any enactment or other rule of law to a jury or the verdict or finding of a jury shall be construed accordingly.

(5) At the conclusion of any such trial, the court shall retire to consider its verdict, which shall be determined by a majority and delivered in open court by the presiding judge.

(6) In the event of a verdict of guilty—

(a) the presiding judge shall pass sentence; and

(b) without prejudice to its power apart from this paragraph to give a judgment, the court shall, at the time of conviction or as soon as practicable thereafter, give a judgment in writing stating the reasons for the conviction.

(7) Any reference in any enactment or other rule of law to—

(a) the commencement of the trial; or

(b) the swearing of the jury,

shall be taken to be a reference to the reading of the indictment to the court by the clerk.

(8) In the application of section 87 of the 1995 Act (non-availability of judge) to such proceedings, any reference to the clerk of court includes a reference to the senior remaining judge.

### **Questions arising prior to trial**

6.—(1) Questions arising in proceedings conducted by virtue of this Order prior to the reading of the indictment to the court by the clerk shall be dealt with in the ordinary way.

(2) Any such question shall be heard and determined at the premises of the court, unless the accused are not entitled, or have intimated that they do not wish, to be present, when it may be heard and determined at a sitting of the High Court of Justiciary in Edinburgh.

### **Additional judge**

7.—(1) When he makes appointments under article 5 of this Order, the Lord Justice Clerk shall also appoint a Lord Commissioner of Justiciary (in this Article referred to as an “additional judge”) to sit with the court.

(2) Subject to paragraph (3) below, the additional judge shall sit with the judges of the court, and shall participate in all their deliberations, but shall not vote in any decision which is required to be taken.

(3) Where one of the judges originally appointed to form part of the court—

(a) has died; or

(b) is absent, and it appears to the senior remaining judge that the absence will be prolonged, the senior remaining judge shall so certify in writing, and the additional judge shall thereafter assume the functions of the deceased or absent judge.

### **Constables and officers of law**

8. Anything which, under or by virtue of any enactment or other rule of law, requires to be done or may be done by a constable or officer of law in relation to criminal proceedings may, in relation to proceedings conducted by virtue of this Order, be done at the premises of the court.

### **Execution of warrant**

9. For the purposes of any enactment or other rule of law relating to criminal proceedings in Scotland, the detention of the accused shall not begin prior to the execution of the warrant to arrest them at the premises of the court.

### **Powers of sheriff**

10. Anything which, under or by virtue of any enactment or other rule of law, requires to be done or may be done by a sheriff in relation to criminal proceedings may, in relation to proceedings conducted by virtue of this Order, be done—

- (a) by any sheriff who would have jurisdiction if the proceedings were taking place in Scotland; and
- (b) at the premises of the court.

### **Productions**

11. Productions shall be made available for inspection—

- (a) by the accused, at the premises of the court; or
- (b) by their representatives, at such address or addresses in the United Kingdom as may be intimated to the accused by the Clerk of Justiciary.

### **Witnesses**

12.—(1) Witnesses in the United Kingdom who are cited to appear for the purpose of proceedings being conducted by virtue of this Order may be cited to appear at the premises of the court.

(2) Any warrant for the arrest of a witness shall be authority for him to be transferred, under arrangements made in that regard by the Secretary of State, to the premises of the court.

(3) It shall be competent for witnesses who are outwith the United Kingdom to be cited to appear before the High Court of Justiciary sitting in the Netherlands in the same way as if the court had been sitting in Scotland and, accordingly, subsection (1)(b) of section 2 of the Criminal Justice (International Co-operation) Act 1990<sup>(6)</sup> (service of United Kingdom process overseas) shall have effect as if the reference to a court in the United Kingdom included the High Court of Justiciary sitting, by virtue of this Order, in the Netherlands.

### **Offences committed in course of proceedings**

13.—(1) The High Court of Justiciary shall have jurisdiction in relation to any contempt of court or other offence committed in the course of, or in relation to, proceedings being conducted by virtue of this Order, whether at the premises of the court or elsewhere in the Netherlands.

(2) Where an offence in relation to which the High Court of Justiciary has jurisdiction by virtue of paragraph (1) above is not dealt with summarily by that court sitting in the Netherlands, it may be dealt with at a later date by way of petition and complaint or on indictment at a sitting of the High Court of Justiciary in Scotland.

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(6) 1990 c. 5.

## Appeals

14.—(1) For the purpose of hearing any appeal (including any application to the *nobile officium*) in relation to any proceedings to which this Order applies, the High Court of Justiciary may sit either at the premises of the court or in Scotland; but where either of the accused is entitled to attend any such appeal and intimates that he wishes to do so, it shall be heard at the premises of the court.

(2) Where the appeal is from a decision of the court constituted under article 5 of this Order, the quorum of the High Court of Justiciary sitting for the purposes of paragraph (1) above shall be five Lords Commissioners of Justiciary.

(3) The Lords Commissioners of Justiciary who are to constitute the court for the purposes of paragraph (1) above shall be appointed by the Lord Justice Clerk.

## Place of confinement of accused

15.—(1) Where a warrant for the arrest or imprisonment of the accused has been executed, they shall be confined in the premises of the court until the conclusion of proceedings conducted by virtue of this Order.

(2) Any enactment or other rule of law applying to prisons or prisoners in Scotland shall, subject to article 16 of this Order, apply in relation to the premises of the court and the persons confined there as if, in so far as they are used for that purpose, the premises were a prison in Scotland.

(3) Anything which, under or by virtue of any enactment or other rule of law, requires to be done or may be done by an officer of a prison may be done by such an officer at the premises of the court.

## Modification of enactments relating to prisons

16.—(1) The following provisions of the Prisons (Scotland) Act 1989(7) shall not apply, namely—

- section 3(2) (appointment of chaplains),
- section 7 (powers of inspection of prisons),
- section 8 (visiting committees),
- section 9 (appointment of prison ministers),
- sections 36 to 38 (provisions relating to acquisition and disposal of prisons and land),
- sections 40 and 40A (persons unlawfully at large),
- section 41 (prohibited articles), and
- section 41A (search by authorised employee).

(2) Section 3A of that Act (medical services) shall have effect as if any reference to a registered medical practitioner included a reference to any person in the Netherlands holding any diploma, certificate or other evidence of formal qualification entitled to recognition under Article 2 of Council Directive 93/16 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications(8).

(3) Section 34 of that Act (notification of death of prisoner) shall have effect as if—

- (a) the reference to the procurator fiscal were a reference to the Lord Advocate; and
- (b) the reference to the visiting committee were omitted.

(4) The following provisions of the Prisons and Young Offenders Institutions (Scotland) Rules 1994(9) shall not apply, namely—

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(7) 1989 c. 45.

(8) OJ L165, 7.7.1993, p. 1.

(9) S.I.1994/1931, as amended by S.I. 1996/32, 1197/2007 and 1998/1589.

- (a) rules 36 to 38 (chaplains, visiting ministers and religious services);
- (b) rule 71 (provision of work for remand prisoners);
- (c) rules 104 to 110 (complaints);
- (d) Part 13 (transfer and discharge of prisoners);
- (e) Part 16 (visiting committees),

and, in applying the remainder of the Rules, the Governor may make such adaptations of the prisons regime as appear to him to be necessary, having regard to the circumstances of the premises of the court and of the persons confined there.

(5) Section 10 of the Prisons (Scotland) Act 1989 (place of confinement of prisoners) and Schedule 1 to the Crime (Sentences) Act 1997<sup>(10)</sup> (transfer of prisoners) shall not apply to the accused while they are confined in the premises of the court for the purpose of proceedings conducted by virtue of this Order.

#### **Powers of Lord Advocate and Secretary of State**

**17.** Without prejudice to any powers which he may have under any other enactment or other rule of law, the Lord Advocate or the Secretary of State may do anything, whether within or outwith the United Kingdom, which appears to him to be necessary or expedient for the purposes of this Order.

*N. H. Nicholls*  
Clerk of the Privy Council

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

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## **EXPLANATORY NOTE**

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

This Order, made under the United Nations Act 1946 pursuant to a resolution of the Security Council of the United Nations, makes provision for criminal proceedings against the two men accused of the destruction of Pan Am 103 over Lockerbie on 21st December 1988, including a trial before the High Court of Justiciary, to be conducted in the Netherlands.