
STATUTORY INSTRUMENTS

2018 No. 187

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

PART 1

INTRODUCTION

Citation, commencement and extent

1.—(1) This Order may be cited as the United Nations (International Residual Mechanism for Criminal Tribunals) Order 2018 and comes into force on 8th March 2018.

(2) This Order extends to the United Kingdom.

(3) So far as this Order relates to proceedings in a service court the relevant provisions extend to any place at which those proceedings are held.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“access order” means an order made under article 18(5)(b);

“appropriate judicial officer” means—

(a) the Senior District Judge (Chief Magistrate);

(b) a District Judge (Magistrates’ Courts) designated by the Senior District Judge (Chief Magistrate) for the purposes of this Order; or

(c) the Sheriff of Lothian and Borders;

“competent court” means a court consisting of an appropriate judicial officer;

“delivery order” means an order for delivery up made under article 6, 9(5) or 10(6);

“endorsed warrant” means a warrant of arrest endorsed under article 4(3);

“the Mechanism” means—

(a) the International Residual Mechanism for Criminal Tribunals established by resolution 1966 adopted by the United Nations Security Council on 22 December 2010(1);

(b) any of the organs of the Mechanism referred to in article 4 of the Statute;

“Mechanism crime” means a crime in respect of which the Mechanism has competence under article 1 of the Statute;

“national court” means a court in the United Kingdom or a service court;

“the President of the Mechanism” means the President appointed under the Statute by the Secretary-General of the United Nations;

“prisoner” means—

(1) S/RES/1966 (2010).

(a) a person serving a sentence in a prison or other institution to which the Prison Act 1952(2), the Prisons (Scotland) Act 1989(3) or the Prison Act (Northern Ireland) 1953(4) applies; or

(b) a person serving a sentence of detention or imprisonment imposed by a service court;

“production order” means an order made under article 18(5)(a);

“the Prosecutor” means the Prosecutor responsible under the Statute for the investigation and prosecution of persons in accordance with the Statute and the Rules;

“the Registrar” means the Registrar appointed under the Statute by the Secretary-General of the United Nations;

“the Rules” means the Rules of Procedure and Evidence of the Mechanism(5) adopted under article 13 of the Statute;

“service court” means a court martial constituted under the Armed Forces Act 2006(6), whether the court is held within the United Kingdom or elsewhere;

“sheriff” includes “summary sheriff”;

“the Statute” means the Statute of the Mechanism annexed to resolution 1966 adopted by the United Nations Security Council on 22 December 2010, the text of which is set out in the Schedule to this Order;

“transfer order” means an order issued by the Mechanism under rule 38 of the Rules for the transfer of a person to the Mechanism; and

“transfer warrant” means a warrant issued under article 10(2) or (9).

(2) A reference in this Order to a part of the United Kingdom is a reference to England and Wales, to Scotland or to Northern Ireland.

(3) A reference in this Order to arrangements made by the Secretary of State with the Registrar or with another state is a reference to arrangements of a general nature or to arrangements relating to a particular case or group of cases.

Purpose of this Order

3.—(1) This Order has effect for the purpose of enabling the United Kingdom to co-operate with the Mechanism in the investigation and prosecution of persons accused of committing Mechanism crimes and the punishment of persons convicted of such crimes.

(2) Without prejudice to the generality of paragraph (1), this Order has effect—

(a) to provide for the arrest and delivery to the Mechanism of persons accused or convicted of a Mechanism crime and for the arrest in cases of urgency of persons suspected of having committed a Mechanism crime;

(b) to secure the attendance before the Mechanism of persons as witnesses or to assist in investigations;

(c) to give effect to requests by the Mechanism for the discontinuance of certain proceedings in courts constituted under any enactment or rule of law applying in England and Wales, Scotland and Northern Ireland;

(2) 1952 c. 52. There are amendments, but none relevant to this Order.

(3) 1989 c. 45, as amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), section 22. There have been other amendments, but none are relevant.

(4) 1953 c. 18 (N.I.), as amended by S.I. 2010/976, articles 1(2) and 6(1).

(5) http://www.unmict.org/sites/default/files/documents/120608_rules_en.pdf.

(6) 2006 c. 52. There are amendments, but none are relevant to this Order.

- (d) to provide the Mechanism with other forms of assistance in the investigation and prosecution of Mechanism crimes;
 - (e) to enforce orders of the Mechanism for the preservation or restitution of property and to give effect to requests to determine the ownership of property; and
 - (f) to make provision for the immunities and privileges of the Mechanism and persons connected with it.
- (3) Nothing in this Order prevents the provision of assistance to the Mechanism otherwise than under this Order.

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(7)) have been instituted in respect of the arrested person in a national court and that those proceedings—

(7) 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⁽⁸⁾ (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;

⁽⁸⁾ 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⁽⁹⁾ (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—

(9) 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.

PART 3

DISCONTINUANCE OF PROCEEDINGS IN NATIONAL COURTS

Discontinuance of relevant proceedings

14.—(1) This article applies where the Secretary of State receives from the Mechanism a request in accordance with the Statute and the Rules that a national court should defer to the competence of the Mechanism by discontinuing proceedings to which the request relates.

(2) The Secretary of State must transmit the request to the court in which the proceedings are taking place by a notice addressed to the appropriate person; and for the purposes of this paragraph the appropriate person in the case of a court mentioned below is the person or authority indicated—

- (a) Magistrates’ Court: Justices’ Chief Executive for the Court;
- (b) Court of summary jurisdiction: Clerk of Petty Sessions;
- (c) Crown Court: Chief Clerk of the Crown Court;
- (d) High Court: Head Clerk, Crown Office;
- (e) High Court of Northern Ireland: Master (Queen’s Bench and Appeals);
- (f) Court of Appeal: Chief Clerk (Criminal Division);
- (g) Supreme Court: Registrar of the Supreme Court;
- (h) Court-martial under the Armed Forces Act 2006: Court Administrative Officer.

(3) If a court to which a request is transmitted is satisfied that—

- (a) the request relates to relevant proceedings within the meaning of this article, and
- (b) in the case of proceedings which are relevant proceedings as defined in paragraph (6)(a) or (c), those proceedings are in respect of conduct which would constitute a Mechanism crime,

the court must order the discontinuance of the proceedings and may make such other orders as are appropriate to give effect to the request, including the revocation of a warrant of arrest issued in connection with the proceedings.

(4) For the purposes of considering a request transmitted to it in pursuance of this article, the court may adjourn the proceedings for such period or periods, and on such conditions, as it deems fit.

(5) If the court is not satisfied as to the matters specified in paragraph (3), it may not make an order for the discontinuance of the proceedings.

(6) Relevant proceedings within the meaning of this article are—

- (a) proceedings in a Magistrates' Court, a Justice of the Peace Court, a court of summary jurisdiction or the Crown Court, a Sheriff Court or the High Court of Justiciary concerning an indictable offence of which the accused has not yet been convicted;
- (b) proceedings under the Extradition Act 2003 relating to a person in respect of whom a "Part 1 warrant", an "arrest warrant" or a "provisional warrant" (as those terms are defined in that Act) has been issued under that Act or proceedings relating to such proceedings; or
- (c) proceedings in a service court concerning an offence of which the accused has not yet been convicted.

(7) The discontinuance of any proceedings in pursuance of a request by the Mechanism does not of itself prevent—

- (a) the institution of fresh proceedings in a national court; or
- (b) the institution of fresh proceedings under the Extradition Act 2003,

in respect of the same offence.

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

- (a) the Secretary of State must transmit to the Lord Advocate, in the case of solemn proceedings, or the procurator fiscal, in the case of summary proceedings, any request made by the Mechanism which relates to proceedings in a court in Scotland;
- (b) paragraphs (2) to (5) are omitted.

PART 4

OTHER FORMS OF ASSISTANCE TO THE MECHANISM

Transmission of information and records

15.—(1) This article applies where the Secretary of State receives from the Mechanism—

- (a) a request for information relating to any relevant proceedings within the meaning of article 14 or to any investigation of conduct which would constitute a Mechanism crime; or
- (b) as part of a request mentioned in article 14(1), a request for the forwarding of the results of any investigation of conduct relating to relevant proceedings within the meaning of article 14 and a copy of the court's record.

(2) The Secretary of State or, where the information or record is to be obtained in Scotland, the Lord Advocate or procurator fiscal must take such steps as appear to the Secretary of State, Lord Advocate or procurator fiscal to be appropriate to secure the production of the information or record

requested, and on its production to the Secretary of State, Lord Advocate or procurator fiscal must transmit it to the Mechanism.

Search etc. for material relevant to Mechanism investigation

16.—(1) Part II of the Police and Criminal Evidence Act 1984⁽¹⁰⁾ (powers of entry, search and seizure) has effect as if—

- (a) references to indictable offences in section 8 of and Schedule 1 to that Act included any conduct which constitutes a Mechanism crime and which would constitute an indictable offence if it had occurred in any part of the United Kingdom; and
- (b) references to an enactment or an enactment contained in an Act included references to this Order.

(2) If, on an application made by a constable, a justice of the peace is satisfied—

- (a) that proceedings have been instituted for the indictment of a person by the Mechanism or that a person has been arrested during an investigation by the Mechanism;
- (b) that the conduct constituting the Mechanism crime which is the subject of the proceedings or investigation would constitute an indictable offence within the meaning of the Police and Criminal Evidence Act 1984 if it had occurred in any part of the United Kingdom; and
- (c) that there are reasonable grounds for suspecting that there is on premises in the United Kingdom occupied or controlled by that person evidence relating to the Mechanism crime other than items subject to legal privilege within the meaning of that Act,

the justice of the peace may issue a warrant authorising a constable to enter and search those premises and to seize any such evidence found there.

(3) The power to search conferred by paragraph (2) is only a power to search to the extent that it is reasonably required for the purposes of discovering such evidence as is there mentioned.

(4) An application for a warrant or order may only be made under paragraph (1) or (2) in pursuance of a direction given by the Secretary of State in response to a request received from the Mechanism, and any evidence seized by a constable under this article must be furnished by the constable to the Secretary of State for transmission to the Mechanism.

(5) If to comply with the request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the constable must also furnish for transmission such document of that nature as may be specified in the direction given by the Secretary of State.

(6) Where the evidence consists of a document the original or a copy must be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it must be transmitted as may be necessary to comply with the request.

(7) In the application of this article to Northern Ireland—

- (a) for any reference to the Police and Criminal Evidence Act 1984 there is substituted a reference to the Police and Criminal Evidence (Northern Ireland) Order 1989⁽¹¹⁾,
- (b) for any reference to Part II and section 8 of and Schedule 1 to that Act there is substituted a reference to Part III and article 10 of and Schedule 1 to that Order, and
- (c) for any reference to justice of the peace, there is substituted lay magistrate.

⁽¹⁰⁾ 1984 c. 60. Part II is amended by the Public Order Act 1986 (c. 64), Schedule 2, para. 7, the Immigration and Asylum Act 1999 (c. 33), section 169(1) and Schedule 4, para. 80, the Criminal Justice and Police Act 2001 (c. 16), section 86(1) and Schedule 2, Part II, para. 13, the Courts Act 2003 (c. 39) sections, 65, 109, 110, Schedule 4, para. 5, and Schedule 8, para. 281, the Criminal Justice Act 2003 (c. 44), sections 2, 12, 336 and Schedule 1 paragraphs 3 and 4, the Serious Organised Crime and Police Act 2005 (c. 15), sections 111, 113, 114, and Schedule 7, Part 3, para.43, S.I. 2005/3495, article 2, and S.I. 2005/3496, articles 7 and 8. There are other amendments, but none are relevant.

⁽¹¹⁾ S.I. 1989/1341 (N.I. 12), as amended by S.I. 2007/288 (N.I.2), articles 1(2), 7, 9, 10, 12, 13, 14, and S.I. 2008/1216 (N.I.1), article 1(3) and 86.

Search etc. for material relevant to Mechanism investigation: Scotland

17.—(1) In the application of this Order to Scotland, article 16 is omitted and the provisions of this article have effect.

- (2) If, on an application made by the procurator fiscal, it appears to a sheriff—
- (a) that proceedings have been instituted for the indictment of a person by the Mechanism or that a person has been arrested during an investigation by the Mechanism; and
 - (b) that the conduct constituting the Mechanism crime which is the subject of the proceedings or investigation would constitute an offence punishable by imprisonment if it had occurred in Scotland,

the sheriff has the like power to grant a warrant authorising entry, search and seizure by any constable as the sheriff would have at common law in respect of any offence punishable at common law in Scotland.

(3) An application for a warrant may only be made under paragraph (2) by a procurator fiscal in pursuance of a request received by the Secretary of State from the Mechanism, and any evidence seized by a constable under this article must be furnished by the constable to the procurator fiscal for transmission to the Mechanism.

(4) If to comply with a request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the constable must also furnish for transmission such document of that nature as may be directed by the procurator fiscal.

(5) Where the evidence consists of a document the original or a copy must be transmitted and where it consists of any other article the article itself or a description, photograph or other representation of it must be transmitted as may be necessary to comply with the request.

Production or Access Orders

- 18.—(1) Where the Secretary of State receives a request from the Mechanism for assistance—
- (a) in ascertaining whether a person has benefited from a Mechanism crime; or
 - (b) in identifying the extent or whereabouts of property derived directly or indirectly from a Mechanism crime,

the Secretary of State may direct a constable to apply for an order under paragraph (5) and, on receipt of such a direction, the constable must make an application for such an order to a Circuit Judge or, in Northern Ireland, a County Court Judge.

- (2) Any such application—
- (a) in England and Wales, may be made without notice and may be granted without a hearing; and
 - (b) in Northern Ireland, may be made on an ex parte application to a judge in chambers.

(3) The judge may make an order under paragraph (5) if the judge is satisfied that there are reasonable grounds for suspecting—

- (a) that a specified person has benefited from a Mechanism crime; and
- (b) that the material to which the application relates is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made.

(4) No such order must be made if it appears to the judge that the material to which the application relates consists of or includes items subject to legal privilege.

(5) The judge may order a specified person (“P”) who appears to have in P’s possession, custody or power specified material, or material of a specified description, to which the application relates, either—

- (a) to produce the material to a constable within a specified period for the constable to take away; or
- (b) to give a constable access to the material within a specified period.

(6) The specified period is seven days beginning with the date of the order unless it appears to the judge making the order that a longer or shorter period would be appropriate in the particular circumstances of the application.

(7) Where the judge makes an access order in relation to material on any premises the judge may, on the application of a constable, order any person who appears to the judge to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

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

- (a) for paragraph (1) there is substituted—
 - “(1) Where the Secretary of State receives a request from the Mechanism for assistance—
 - (a) in ascertaining whether a person has benefited from a Mechanism crime; or
 - (b) in identifying the extent or whereabouts of property derived directly or indirectly from a Mechanism crime,where it appears to the Secretary of State that the evidence of benefit or the property is in Scotland, the Secretary of State must pass a copy of the request to the procurator fiscal who may apply for an order under paragraph (5).”;
- (b) for paragraphs (2) and (3) there is substituted—
 - “(2) An order under paragraph (5) may be made on an ex parte application by the procurator fiscal to a sheriff in chambers.”;
- (c) for any reference to “the judge”, there is substituted a reference to “the sheriff”; and
- (d) in paragraph (4), the expression “items subject to legal privilege” has the meaning given to that expression by section 412 of the Proceeds of Crime Act 2002(12).

Material not yet in possession or existence

19.—(1) A production or access order under article 18 may be made in relation to a person (“P”) who the judge considers is likely to have material to which the application relates in P’s possession, custody or power within the period of 28 days beginning with the date of the order, including material which is expected to come into existence within that period.

- (2) Where a production or access order is made in respect of material described in paragraph (1)—
 - (a) the order must require P to notify a named constable as soon as is reasonably practicable after any material to which the application relates comes into P’s possession, custody or power, and
 - (b) article 18 has effect with the following modifications—
 - (i) the references in article 18(5) to material which P has in P’s possession, custody or power are to be read as references to the material that comes into P’s possession, custody or power; and
 - (ii) the reference in article 18(6) to the date of the order is to be read as reference to the date of the notification required by paragraph (3).

(12) 2002 c. 29. There have been amendments, but none relevant to this Order.

(3) In the application of this Order to Scotland, for the reference to “the judge” in paragraph (1) there is substituted a reference to “the sheriff”.

Effect of order

20.—(1) A production or access order has effect as if it were an order of the Crown Court and may be varied or discharged accordingly.

(2) In the application of this article to Scotland, for paragraph (1) there is substituted—
 “(1) The sheriff has power to vary or discharge a production or access order.”.

Effect of order: supplementary

21.—(1) Where the material to which a production or access order relates consists of information contained in a computer—

- (a) a production order has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
- (b) an access order has effect as an order to give access to the material in a form in which it is visible and legible.

(2) A production or access order does not confer any right to production of, or access to, items subject to legal privilege.

(3) Subject to paragraph (2), a production or access order has effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(4) For the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984 or, in Northern Ireland, Articles 23 and 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (access to, and copying and retention of, seized material) material produced in pursuance of a production or access order must be treated as if it were material seized by a constable.

- (5) In the application of this article to Scotland, the following modifications have effect—
- (a) paragraph (4) is omitted, and
 - (b) in paragraph (2), “items subject to legal privilege” has the meaning given to that expression by section 412 of the Proceeds of Crime Act 2002.

Order in relation to material in possession of government department

22.—(1) A production or access order may be made in relation to material in the possession, custody or power of a government department.

- (2) An order so made—
- (a) must be served as if the proceedings were civil proceedings against the department; and
 - (b) may require any officer of the department, whether named in the order or not, who may for the time being have in the officer’s possession, custody or power the material concerned, to comply with it.
- (3) In this article “government department” means—
- (a) an authorised government department for the purposes of the Crown Proceedings Act 1947⁽¹³⁾;
 - (b) an authorised Northern Ireland department for the purposes of that Act as it applies to the Crown in right of Her Majesty’s Government in Northern Ireland; or

(13) 1947 c. 44, as amended by S.I. 1968/1656, article 3(2). There are other amendments, but none relevant to this Order.

- (c) a public department within the meaning of the Crown Suits (Scotland) Act 1857(14) or any part of the Scottish Administration.

United Kingdom evidence for Mechanism use

23.—(1) This article applies where the Secretary of State receives from the Mechanism—

- (a) a request for assistance in obtaining evidence in the United Kingdom; or
- (b) an order of the Mechanism to produce evidence in the United Kingdom,

relating to proceedings that have been instituted before the Mechanism or an investigation that is being carried on by it.

(2) If the evidence is to be obtained in Scotland the Secretary of State shall transmit the request or order to the Lord Advocate.

(3) If the relevant authority is satisfied—

- (a) that a Mechanism crime has been committed or that there are reasonable grounds for suspecting that such a crime has been committed; and
- (b) that proceedings in respect of that crime have been instituted before the Mechanism or than an investigation is being carried on by it,

the relevant authority may, in its discretion, by notice in writing nominate a court in the United Kingdom to receive such of the evidence to which the request or order relates as may appear to the court to be appropriate for the purposes of giving effect to the request or order.

(4) The relevant authority must not proceed under paragraph (3) in respect of an order from the Mechanism to produce evidence until any application by the United Kingdom to the Mechanism for a review of the order or to have the order set aside has been finally determined.

(5) In this article “evidence” includes documents and other articles.

(6) For the purposes of proceedings before a nominated court—

- (a) paragraphs 1 to 3, 7 and 8 of Schedule 1 to the Crime (International Cooperation) Act 2003(15) have effect; and
- (b) paragraph 5 of that Schedule has effect as if—
 - (i) sub-paragraph (3) of that paragraph and any reference to it were omitted, and
 - (ii) for any reference to criminal proceedings in the country from which the request for the evidence has come there were substituted a reference to proceedings before the Mechanism.

(7) In proceedings before a nominated court the court may, if it thinks it necessary in the interests of justice, direct that the public be excluded from the court.

(8) A nominated court must ensure that a register is kept of the proceedings which indicates in particular—

- (a) which persons with an interest in the proceedings were present;
- (b) which of those persons were represented and by whom; and
- (c) whether any of those persons were denied the opportunity of cross-examining a witness as to any part of the witness’s testimony,

but unless authorised by the relevant authority, or with the leave of the court, the register must not be open to inspection.

(14) 1857 c. 44, as amended by the Customs and Excise Act 1952 (c. 44), Schedule 10, Part I, the Crown Estate Act 1956 (c. 73), section 1(7), the Crown Estate Act 1961 (c. 55), Schedule 2 paragraph 4(1), the Defence (Transfer of Functions) Act 1964 (c. 15), section 3(2), and the Post Office Act 1969 (c. 48), Schedule 11, Part II.

(15) 2003 c. 32

(9) The evidence received by the nominated court, together with a copy of the register of the proceedings, must be furnished to the relevant authority for transmission to the Mechanism.

(10) In the application of paragraphs (8) and (9) to Scotland references to the register are to be read as references to the record.

(11) If, to comply with the request, it is necessary for the evidence or deposition to be accompanied by any certificate, affidavit or other verifying document, the court must also furnish for transmission such document of that nature as may be specified in the notice nominating the court.

(12) Where evidence consists of a document the original or a copy must be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it must be transmitted, as may be necessary to comply with the request.

(13) In this article, references to the relevant authority are to—

- (a) in respect of evidence to be obtained, or already obtained, in Scotland, the Lord Advocate;
- (b) in respect of evidence to be obtained, or already obtained, in another part of the United Kingdom, the Secretary of State.

Service of process

24.—(1) This article applies where the Secretary of State receives from the Mechanism—

- (a) a summons or other process requiring a person (not being a prisoner) to appear before the Mechanism for the purposes of giving evidence or assisting an investigation or for both; or
- (b) a document notifying interested parties of a special hearing to determine the matter of restitution of specified property or the proceeds of it and affording them the opportunity to justify a claim to the property or its proceeds,

together with a request for it to be served on a person (“P”) in the United Kingdom.

(2) If it appears that P is in Scotland, the Secretary of State must transmit the summons, other process, or document to the Lord Advocate.

(3) The Secretary of State or, where P is in Scotland, the Lord Advocate may cause the process or document to be served by post or, if the request is for personal service, direct the chief officer of police to cause it to be personally served on P.

(4) Where a person is served with any summons or other process referred to in paragraph (1)(a)—

- (a) that person is obliged to comply with the summons or process; and
- (b) the service of such a summons or process must be accompanied by a notice stating the effect of sub-paragraph (a) and of article 9 (securing attendance of person as witness or to assist in investigations).

(5) The service of a document referred to in paragraph (1)(b) must be accompanied by a notice stating that the person on whom it is served may wish to seek advice as to the possible consequences of failing to justify a claim.

(6) Where a chief officer of police is directed under this article to cause any process or document to be served—

- (a) the chief officer must inform the Secretary of State or, (where the direction was given by the Lord Advocate), the Lord Advocate as soon as practicable after the process or document has been served of when and how it was served and (if possible) furnish the Secretary of State or (where the direction was given by the Lord Advocate) the Scottish Ministers with a receipt signed by the person on whom it was served; or
- (b) if the chief officer has been unable to cause the process or document to be served, the chief officer must inform the Secretary of State or (where the direction was given by the Lord Advocate) the Lord Advocate, as soon as practicable of that fact and of the reason.

- (7) References in this article to the chief officer of police are to—
- (a) where P appears to be in England and Wales, the chief officer of police of the area in which P appears to be;
 - (b) where P appears to be in Scotland, the Chief Constable of the Police Service of Scotland; or
 - (c) where P appears to be in Northern Ireland, the Chief Constable of the Police Service of Northern Ireland.

Enforcement of orders for the freezing of assets or preservation or restitution of property

25.—(1) Where the Secretary of State receives from the Mechanism—

- (a) an order for the adoption of provisional measures to freeze the assets of the accused;
- (b) an order for provisional measures for the preservation and protection of property or the proceeds of property; or
- (c) an order for the restitution of property or the proceeds of property,

the Secretary of State must append to it a direction that it be registered for enforcement in the United Kingdom.

(2) The Secretary of State must—

- (a) appoint a person (“P”) to act on behalf of the Mechanism for the purposes of enforcing the order; and
- (b) give such directions to P as appear to the Secretary of State to be necessary.

(3) If the Secretary of State so directs, then P must apply to a court for the registration of the order for enforcement.

(4) On the application of P the court must register the order as a precondition of enforcement but—

- (a) an order must not be registered unless the court is satisfied that the order is in force and not subject to appeal; and
- (b) if the order has been partly complied with, the court must register the order for enforcement only so far as it has not been complied with.

(5) The registration of the order under this article must be cancelled if the order is satisfied by other means.

(6) A court may on the application of the appointed person in respect of an order mentioned in paragraph (1)(b) or (c) vest in that person any property to which the order relates, and P must—

- (a) dispose of such property in accordance with the directions of the Secretary of State, and
- (b) transmit any proceeds to the Secretary of State, who must transmit the proceeds to the Mechanism.

(7) The court must not exercise its powers of enforcement in relation to any property unless it is satisfied—

- (a) that a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court; and
- (b) that the exercise of the powers will not prejudice the rights of bona fide third parties.

(8) For the purposes of enforcement of an order registered under this article—

- (a) the order has the same force and effect;
- (b) the court has in relation to its enforcement the same powers; and
- (c) proceedings for or with respect to its enforcement may be taken,

as if the court had originally made the order.

(9) Where the Mechanism makes an order (a “suspending order”) that enforcement of a registered order be suspended, the suspending order must, on its production to the court, be registered immediately; and—

- (a) the suspending order has effect as if it had been an order made by the court which stayed or sisted the execution of the original registered order for the same period and on the same conditions as are stated in the suspending order; and
- (b) while the suspending order remains in force, no steps are to be taken to enforce the original registered order.

(10) The reasonable costs and expenses of and incidental to the registration and enforcement of an order under this article (including any variation or cancellation of the registration) are to be recoverable as if they were sums recoverable under the order.

(11) In this article and in article 26 “the court” means—

- (a) in England and Wales, the High Court;
- (b) in Scotland, the Court of Session; and
- (c) in Northern Ireland, the High Court.

(12) Where the Secretary of State receives an order described in paragraph (1) which relates to assets or property in Scotland, the Secretary of State must transmit the order to the Scottish Ministers, and in such circumstances the remainder of this article applies as if references to “the Secretary of State” were to “the Scottish Ministers”.

Proceedings to determine the ownership of property

26. Where the Secretary of State receives a request from the Mechanism to determine the ownership of property or the proceeds of property, the Secretary of State, or in relation to Scotland the Scottish Ministers, may make an application to the court for a decision as to the ownership of the property or proceeds.

Immunities and privileges

27.—(1) The Mechanism, the judges, the Prosecutor, the Registrar, the staff of the Prosecutor and of the Registrar, and defence counsel are to enjoy the immunities and privileges set out in the United Nations and International Court of Justice (Immunities and Privileges) Order 1974(16) (“the 1974 Order”) as follows—

- (a) the Mechanism is to enjoy the immunities and privileges set out in articles 5 to 13 of the 1974 Order as they apply to the United Nations;
- (b) the President of the Mechanism, the Prosecutor and the Registrar are to enjoy the immunities and privileges set out in article 15(1) and (2) and article 16 of the 1974 Order as they apply to high officers of the United Nations;
- (c) the judges of the Mechanism (other than the President) are, when engaged on the business of the Mechanism, to enjoy the immunities and privileges set out in article 15(1) and (2) and article 16 of the 1974 Order as they apply to high officers of the United Nations;
- (d) the staff of the Prosecutor and of the Registrar are to enjoy the immunities and privileges set out in article 16 of the 1974 Order as they apply to officers of the United Nations;
- (e) defence counsel, when holding a certificate that they have been admitted as counsel by the Mechanism and when performing their official functions, and after prior notification by the Mechanism to the Secretary of State of their mission, arrival and final departure,

(16) S.I. 1974/1261, as amended by S.I. 1975/1209.

are to enjoy the immunities and privileges set out in article 17 of the 1974 Order as they apply to experts performing missions on behalf of the United Nations.

(2) Except in so far as in any particular case any immunity is waived by the Mechanism, counsel, advocates, solicitors and witnesses are to enjoy immunity from suit and legal process in respect of words spoken or written and documents or other evidence submitted by them before or to the Mechanism.

(3) The archives of the Mechanism, the ICTY and the ICTR are to enjoy the immunity set out in article 7 of the 1974 Order as it applies to archives of the United Nations.

(4) In paragraph (3)—

“ICTY” means the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 established by resolution 827 (1993) of the Security Council of the United Nations⁽¹⁷⁾;

“ICTR” means the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by resolution 955 (1994) of the Security Council of the United Nations⁽¹⁸⁾.

PART 5

SUPPLEMENTARY PROVISIONS

Warrants of arrest

28.—(1) For the purposes of any enactment or rule of law relating to warrants of arrest but subject to any other provisions of this Order—

- (a) a warrant endorsed in accordance with article 4;
- (b) a provisional warrant issued under article 5; and
- (c) a warrant issued under article 9 or 12,

in any part of the United Kingdom must be treated as if it were a warrant for the arrest of a person charged with an offence committed in that part.

(2) A warrant mentioned in paragraph (1) may be executed in any part of the United Kingdom and may be so executed by any constable.

(3) A person arrested under a warrant referred to in paragraph (1) must be deemed to continue in legal custody until, in accordance with this Order, that person—

- (a) is brought before a competent court; or
- (b) in the case of a warrant issued under article 12, is brought before an officer in charge of a police station,

and article 30 applies in relation to that person as it applies in relation to a person in respect of whom a delivery order or transfer warrant is in force.

⁽¹⁷⁾ S/RES/827 (1993).

⁽¹⁸⁾ S/RES/955 (1994).

Proceedings before a competent court under article 6, 9 or 10

29.—(1) For the purposes of proceedings under article 6, 9 or 10, a competent court in England and Wales has the like powers, including power to adjourn the case and meanwhile to remand the person arrested, as if the proceedings were the summary trial of an information against that person; and—

- (a) section 16(1)(c) of the Prosecution of Offences Act 1985⁽¹⁹⁾ (defence costs on dismissal) applies, reading the reference to the dismissal of the information as a reference to the discharge of the person arrested; and
- (b) sections 13 to 20 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012⁽²⁰⁾ apply as if the proceedings were proceedings for dealing with an individual under the Extradition Act 2003.

(2) For the purposes of proceedings under article 6, 9 or 10, a competent court in Scotland has the like powers, including power to adjourn the case and meanwhile to remand the person arrested in custody or grant the person bail, as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by that person; and the provisions of the Legal Aid (Scotland) Act 1986⁽²¹⁾ relating to such proceedings or any appellate proceedings following on them apply to that person.

Legal custody

30.—(1) A person in respect of whom a delivery order or transfer warrant is in force is deemed to be in legal custody at any time when, being in the United Kingdom or on board—

- (a) any British ship within the meaning of section 1(1) of the Merchant Shipping Act 1995⁽²²⁾;
- (b) any British-controlled aircraft or hovercraft, within the meaning of section 92 of the Civil Aviation Act 1982⁽²³⁾ or that section as applied to hovercraft by provision made under the Hovercraft Act 1968⁽²⁴⁾; or
- (c) any ship, aircraft or hovercraft belonging to, or exclusively employed in the service of, Her Majesty in right of the Government of the United Kingdom,

that person is being taken under the order or warrant to or from any place or is being kept in custody under the order or warrant or, pending the execution of the order or warrant, is on remand.

(2) A person (“P”) authorised by or for the purposes of a delivery order or transfer warrant to take another person to or from any place or to keep that person in custody has all the powers, authority, protection and privileges—

- (a) of a constable in the part of the United Kingdom in which P is for the time being; or
- (b) if P is outside the United Kingdom, of a constable in the part of the United Kingdom to or from which the other person is to be taken.

(3) If a prisoner or any person who is in custody under this Order escapes or is unlawfully at large, the person may be arrested without warrant by a constable and taken to any place where or to which, by virtue of this Order, the person is required to be or to be taken.

(4) In paragraph (3) “constable”, in relation to any part of the United Kingdom, means any person who is a constable in that or any other part of the United Kingdom or any person who, at the place

⁽¹⁹⁾ 1985 c. 23. There are amendments to section 16, but none relevant to this Order.

⁽²⁰⁾ 2012 c.10. There are amendments, but none relevant to this Order.

⁽²¹⁾ 1986 c. 47, as amended by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), sections 64, 65, 77 and 82, and the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), sections 5, 7 and Schedule 4 paragraph 63.

⁽²²⁾ 1995 c. 21. There are amendments, but none relevant to this Order.

⁽²³⁾ 1992 c. 16. There are amendments to section 92, but none relevant to this Order.

⁽²⁴⁾ 1968 c. 59.

in question has, under any enactment or under paragraph (2), the powers of a constable in that or any other part of the United Kingdom.

Custodial sentences by national courts

31.—(1) Where in pursuance of this Order a person who is a prisoner (“P”) is delivered up into the custody of—

- (a) the Mechanism; or
- (b) a state where P is 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,

P continues to be liable to complete any term of imprisonment or detention to which P has been sentenced by a national court; but there must be counted towards the completion of that term any time during which P is in the custody of the Mechanism or another state.

(2) Where in pursuance of this Order a court orders the discharge of a person (“Q”), the discharge is without prejudice to the liability of Q to complete any term of imprisonment or detention to which Q has been sentenced by a national court; and accordingly where Q’s sentence has not expired Q must be transferred in custody to the place where Q is liable to be detained under the sentence to which Q is subject.

(3) Where in pursuance of this Order a delivery order is made or transfer warrant is issued in respect of a person (“R”), the order or warrant may include provision—

- (a) authorising the return of R into the custody of the Secretary of State—
 - (i) in accordance with arrangements made by the Secretary of State with the Registrar, or
 - (ii) where R is taken to a place where R is 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, in accordance with arrangements made by the Secretary of State with the state where that place is situated; and
- (b) for the transfer of R in custody to the place where R is liable to be detained under the sentence to which R is subject.

Evidence

32.—(1) For the purposes of this Order and any connected proceedings, a Mechanism document may be taken to be such a document and to have been issued or made if—

- (a) it purports to have been issued or made in accordance with the Statute or the Rules or, in the case of a request to the Secretary of State, for the purposes of this Order; or
- (b) it is verified by a certificate purporting to be signed by the President of the Mechanism, the Registrar or the Prosecutor certifying that the document is a Mechanism document or a true copy of such a document.

(2) Where facsimile transmission has been used—

- (a) for the making of a request by the Mechanism or the transmission of any supporting documents; or
- (b) for the transmission of any document in consequence of such a request,
- (c) this Order applies as if any documents so sent were the originals of the documents so transmitted.

(3) A document which falls within paragraph (1) or (2) is receivable or, in Scotland, admissible in evidence accordingly.

- (4) In this article “Mechanism document” means—
- (a) a warrant, order, summons or other process of the Mechanism;
 - (b) a copy of such warrant, order, summons or other process; or
 - (c) a request to the Secretary of State by the Mechanism;

and the reference to the President of the Mechanism, the Registrar or the Prosecutor includes a reference to any person lawfully exercising the functions of the President, the Registrar or the Prosecutor.

- (5) Judicial notice is to be taken of the Statute, the Rules and the seal of the Mechanism.

Application of provisions of International Criminal Court Act 2001

33.—(1) Section 23 (provisions as to state or diplomatic immunity) of the International Criminal Court Act 2001 (“the Act”) applies in relation to proceedings under this Order as it applies in relation to proceedings under Part 2 of the Act, with the following adaptations.

- (2) The adaptations are—
- (a) in subsection (1) omit the words “by reason of a connection with a state party to the ICC Statute”;
 - (b) omit subsections (2), (3) and (5);
 - (c) in subsection (4)—
 - (i) for the reference to the ICC substitute a reference to the Mechanism, and
 - (ii) omit the words “or (2)”.

(3) The provisions of sections 42 to 48 (enforcement of sentences of imprisonment) of the Act apply, with any necessary modifications, in relation to a sentence or term of imprisonment imposed by the Mechanism, as they apply in those sections in relation to a sentence or term of imprisonment imposed by the ICC, and with other references in those sections to the ICC being references to the Mechanism .

- (4) In this article, “the ICC” means the International Criminal Court.

Richard Tilbrook
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