
STATUTORY INSTRUMENTS

2018 No. 187

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

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(1) (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

(1) 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.

- (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(2),
- (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.

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.

(2) [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.

(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(3).

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).

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

(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(4);
- (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
- (c) a public department within the meaning of the Crown Suits (Scotland) Act 1857(5) 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,

(4) 1947 c. 44, as amended by S.I. 1968/1656, article 3(2). There are other amendments, but none relevant to this Order.

(5) 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.

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⁽⁶⁾ 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.

(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(7) (“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, 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⁽⁸⁾;

“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

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

(8) S/RES/827 (1993).

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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⁽⁹⁾.

(9) S/RES/955 (1994).