

**2018 No. 187**

**UNITED NATIONS**

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

<i>Made</i>	- - - -	<i>8th February 2018</i>
<i>Laid before Parliament</i>		<i>15th February 2018</i>
<i>Laid before the Scottish Parliament</i>		<i>15th February 2018</i>
<i>Coming into force</i>	- -	<i>8th March 2018</i>

At the Court at Buckingham Palace, the 8th day of February 2018

Present,

The Queen's Most Excellent Majesty in Council

Under article 41 of the Charter of the United Nations the Security Council of the United Nations has, by resolution 1966 adopted on 22nd December 2010, called upon Her Majesty's Government in the United Kingdom to apply certain measures to give effect to decisions of that Council in relation to the International Residual Mechanism for Criminal Tribunals;

Her Majesty, in exercise of the powers conferred upon Her by section 1 of the United Nations Act 1946(a) and section 77(4) of the International Criminal Court Act 2001(b), is pleased, by and with the advice of Her Privy Council, to order as follows:

**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.

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(a) 1946 c. 45. Section 1(2) was amended by: the Statute Law (Repeals) Act 1995 (c.44), Schedule 1, para 2; the Burma Independence Act 1947 (c.3), Schedule 2, Part 1; and the Zimbabwe Act 1979 (c.60), section 6(3) and Schedule 3. Section 1(4) was amended by the Scotland Act 1998, Schedule 8, para 6. There have been other amendments, but none are relevant to this Order.

(b) 2001 c. 17. Part II, as amended by SI 2014/2706, article 2, Schedule, para.1. There are other amendments, but none relevant to this Order.

(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(a);

(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—

(a) a person serving a sentence in a prison or other institution to which the Prison Act 1952(b), the Prisons (Scotland) Act 1989(c) or the Prison Act (Northern Ireland) 1953(d) 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(e) adopted under article 13 of the Statute;

“service court” means a court martial constituted under the Armed Forces Act 2006(f), 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;

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

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

(c) 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.

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

(e) [http://www.unmict.org/sites/default/files/documents/120608\\_rules\\_en.pdf](http://www.unmict.org/sites/default/files/documents/120608_rules_en.pdf).

(f) 2006 c. 52. There are amendments, but none are relevant 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;
- (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<sup>(a)</sup>) have been instituted in respect of the arrested person in a national court and that those proceedings—

- (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,

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(a) 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, the Anti-Social Behaviour, Crime and Policing Act 2014 (c. 12), sections 160-164, 167, 169, and S.I. 2015/992, article 3(10)-(15). There are other amendments, but none relevant to this Order

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(a) (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.

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(a) 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.

### **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;
- (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(a) (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—

- (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.

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(a) 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.

(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(a) (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(b),
- (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.

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(a) 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.

(b) 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.

- (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(a).

### **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.”.

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(a) 2002 c. 29. There have been amendments, but none relevant to this 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(a);
- (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(b) 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.

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

(b) 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.

(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(a) 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;

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(a) 2003 c. 32

- (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(a) (“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(b);

“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

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

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

December 1994, established by resolution 955 (1994) of the Security Council of the United Nations<sup>(a)</sup>.

## 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.

### **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<sup>(b)</sup> (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<sup>(c)</sup> 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<sup>(d)</sup> relating to such proceedings or any appellate proceedings following on them apply to that person.

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

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

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

(d) 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.

## 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(a);
- (b) any British-controlled aircraft or hovercraft, within the meaning of section 92 of the Civil Aviation Act 1982(b) or that section as applied to hovercraft by provision made under the Hovercraft Act 1968(c); 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 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

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

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

(c) 1968 c. 59.

- (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*  
Clerk of the Privy Council

## SCHEDULE 1

Article 2

### **STATUTE OF THE INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS (IRMCT)**

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations to carry out the residual functions of 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 (hereinafter “ICTY”) and 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 (hereinafter “ICTR”), the International Residual Mechanism for Criminal Tribunals (hereinafter “the Mechanism”) shall function in accordance with the provisions of the present Statute.

#### **Article 1: Competence of the Mechanism**

1. The Mechanism shall continue the material, territorial, temporal and personal jurisdiction of the ICTY and the ICTR as set out in Articles 1 to 8 of the ICTY Statute and Articles 1 to 7 of the ICTR Statute, as well as the rights and obligations, of the ICTY and the ICTR, subject to the provisions of the present Statute.

2. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute, the persons indicted by the ICTY or the ICTR who are among the most senior leaders suspected of being most responsible for the crimes covered by paragraph 1 of this Article, considering the gravity of the crimes charged and the level of responsibility of the accused.

3. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute, the persons indicted by the ICTY or the ICTR who are not among the most senior leaders covered by paragraph 2 of this Article, provided that the Mechanism may only, in accordance with the provisions of the present Statute, proceed to try such persons itself after it has exhausted all reasonable efforts to refer the case as provided in Article 6 of the present Statute.

4. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute—

- (a) any person who knowingly and wilfully interferes or has interfered with the administration of justice by the Mechanism or the Tribunals, and to hold such person in contempt; or
- (b) a witness who knowingly and wilfully gives or has given false testimony before the Mechanism or the Tribunals.

Before proceeding to try such persons, the Mechanism shall consider referring the case to the authorities of a State in accordance with Article 6 of the present Statute, taking into account the interests of justice and expediency.

5. The Mechanism shall not have the power to issue any new indictments against persons other than those covered by this Article.

## **Article 2: Functions of the Mechanism**

The Mechanism shall continue the functions of the ICTY and of the ICTR, as set out in the present Statute (“residual functions”), during the period of its operation.

## **Article 3: Structure and Seats of the Mechanism**

The Mechanism shall have two branches, one branch for the ICTY and one branch for the ICTR, respectively. The branch for the ICTY shall have its seat in The Hague. The branch for the ICTR shall have its seat in Arusha.

## **Article 4: Organisation of the Mechanism**

The Mechanism shall consist of the following organs—

- (a) the Chambers, comprising a Trial Chamber for each branch of the Mechanism and an Appeals Chamber common to both branches of the Mechanism;
- (b) the Prosecutor common to both branches of the Mechanism;
- (c) the Registry, common to both branches of the Mechanism, to provide administrative services for the Mechanism, including the Chambers and the Prosecutor.

## **Article 5: Concurrent jurisdiction**

1. The Mechanism and national courts shall have concurrent jurisdiction to prosecute persons covered by Article 1 of this Statute.

2. The Mechanism shall have primacy over national courts in accordance with the present Statute. At any stage of the procedure involving a person covered by Article 1 paragraph 2 of this Statute, the Mechanism may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the Mechanism.

## **Article 6: Referral of Cases to National Jurisdictions**

1. The Mechanism shall have the power, and shall undertake every effort, to refer cases involving persons covered by paragraph 3 of Article 1 of this Statute to the authorities of a State in accordance with paragraphs 2 and 3 of this Article. The Mechanism shall have the power also to refer cases involving persons covered by paragraph 4 of Article 1 of this Statute.

2. After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Mechanism, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a State—

- (i) in whose territory the crime was committed; or
- (ii) in which the accused was arrested; or
- (iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.

3. In determining whether to refer a case involving a person covered by paragraph 3 of Article 1 of this Statute in accordance with paragraph 2 above, the Trial Chamber shall, consistent with Security Council resolution 1534 (2004), consider the gravity of the crimes charged and the level of responsibility of the accused.

4. The Trial Chamber may order such referral *proprio motu* or at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.

5. The Mechanism shall monitor cases referred to national courts by the ICTY, the ICTR, and those referred in accordance with this Article, with the assistance of international and regional organisations and bodies.

6. After an order referring a case has been issued by the ICTY, the ICTR or the Mechanism and before the accused is found guilty or acquitted by a national court, where it is clear that the conditions for referral of the case are no longer met and it is in the interests of justice, the Trial Chamber may, at the request of the Prosecutor or *proprio motu* and upon having given to the State authorities concerned the opportunity to be heard, revoke the order and make a formal request for deferral.

#### **Article 7: *Non bis in idem***

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the ICTY, the ICTR or the Mechanism.

2. A person covered by Article 1 of this Statute who has been tried before a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the Mechanism only if—

- (a) the act for which he or she was tried was characterised as an ordinary crime; or
- (b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Mechanism shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

#### **Article 8: Roster of judges**

1. The Mechanism shall have a roster of 25 independent judges (“judges of the Mechanism”), not more than two of whom may be nationals of the same State.

2. A person who for the purposes of membership of the roster could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

3. The judges of the Mechanism shall only be present at the seats of the branches of the Mechanism as necessary at the request of the President to exercise the functions requiring their presence. In so far as possible, and as decided by the President, the functions may be exercised remotely, away from the seats of the branches of the Mechanism.

4. The judges of the Mechanism shall not receive any remuneration or other benefits for being on the roster. The terms and conditions of service of the judges for each day on which they exercise their functions for the Mechanism shall be those of the judges *ad hoc* of the International Court of Justice. The terms and conditions of service of the President of the Mechanism shall be those of the judges of the International Court of Justice.

#### **Article 9: Qualification of judges**

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. Particular account shall be taken of experience as judges of the ICTY or the ICTR.

2. In the composition of the Trial and Appeals Chambers, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

## **Article 10: Election of judges**

1. The judges of the Mechanism shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner—

- (a) the Secretary-General shall invite nominations for judges, preferably from among persons with experience as judges of the ICTY or the ICTR, from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;
- (b) within 60 days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in Article 9 paragraph 1 of the Statute;
- (c) the Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than 30 candidates, taking due account of the qualifications set out in Article 9 paragraph 1 and adequate representation of the principal legal systems of the world;
- (d) the President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect 25 judges of the Mechanism. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected. Should more than two candidates of the same nationality obtain the required majority vote, the two who received the highest number of votes shall be considered elected.

2. In the event of a vacancy in the roster, after consultation with the President of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of Article 9 paragraph 1 of the Statute, for the remainder of the term of office concerned.

3. The judges of the Mechanism shall be elected for a term of four years and shall be eligible for reappointment by the Secretary-General after consultation with the Presidents of the Security Council and of the General Assembly.

4. If there are no judges remaining on the roster or if no judge on the roster is available for appointment, and if it is not possible to assign a judge currently serving at the Mechanism, and all practical alternatives have been explored, the Secretary-General may, at the request of the President of the Mechanism and after consultation with the Presidents of the Security Council and of the General Assembly, appoint a person meeting the qualifications of Article 9 paragraph 1 of the Statute, to serve as a judge of the Mechanism.

## **Article 11: The President**

1. After consultation with the President of the Security Council and the judges of the Mechanism, the Secretary-General shall appoint a full-time President from among the judges of the Mechanism.

2. The President shall be present at either seat of the branches of the Mechanism as necessary to exercise his or her functions.

## **Article 12: Assignment of judges and Composition of the Chambers**

1. In the event of a trial of a case pursuant to paragraphs 2 and 3 of Article 1 of this Statute, or to consider the referral of such a case to a national jurisdiction, the President shall appoint three judges from the roster to compose a Trial Chamber and the Presiding Judge from amongst their number to oversee the work of that Trial Chamber. In all other circumstances, including trials pursuant to paragraph 4 of Article 1 of this Statute, the President shall appoint a Single Judge from the roster to deal with the matter.

2. The President may designate a duty judge from the roster for each branch of the Mechanism, who will be available at short notice, to serve as a Single Judge and to whom indictments, warrants, and other matters not assigned to a Trial Chamber, may be transmitted for decision.

3. The President of the Mechanism shall be a member of the Appeals Chamber, appoint the other members and preside over its proceedings. In the event of an appeal against a decision by a Single Judge, the Appeals Chamber shall be composed of three judges. In the event of an appeal against a decision by a Trial Chamber, the Appeals Chamber shall be composed of five judges.

4. In the event of an application for review in accordance with Article 24 of this Statute of a judgment rendered by a Single Judge or by a Trial Chamber, the President shall appoint three judges to compose a Trial Chamber on review. In the event of an application for review of a judgment rendered by the Appeals Chamber, the Appeals Chamber on review shall be composed of five judges.

5. The President may appoint, from among the judges of the Mechanism, a reserve judge to be present at each stage of a trial and to replace a judge if that judge is unable to continue sitting.

### **Article 13: Rules of Procedure and Evidence**

1. The judges of the Mechanism shall adopt Rules of Procedure and Evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.

2. Amendments of the Rules of Procedure and Evidence may be decided remotely by the judges of the Mechanism by written procedure.

3. The Rules of Procedure and Evidence and any amendments thereto shall take effect upon adoption by the judges of the Mechanism unless the Security Council decides otherwise.

4. The Rules of Procedure and Evidence and amendments thereto shall be consistent with this Statute.

### **Article 14: The Prosecutor**

1. The Prosecutor shall be responsible for the investigation and prosecution of persons covered by Article 1 of this Statute.

2. The Prosecutor shall act independently as a separate organ of the Mechanism. He or she shall not seek or receive instructions from any government or from any other source.

3. The Office of the Prosecutor shall be composed of a Prosecutor, an officer in charge at the seat of each branch of the Mechanism designated by the Prosecutor, and such other qualified staff as may be required, in accordance with paragraph 5 of this Article. The Prosecutor shall be present at either seat of the branches of the Mechanism as necessary to exercise his or her functions.

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The Office of the Prosecutor shall retain a small number of staff commensurate with the reduced functions of the Mechanism, who shall serve at the seats of the branches of the Mechanism. The Office shall maintain a roster of qualified potential staff, preferably from among persons with experience at the ICTY or the ICTR, to enable it to recruit additional staff rapidly as may be required to perform its functions. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

### **Article 15: The Registry**

1. The Registry shall be responsible for the administration and servicing of the branches of the Mechanism.

2. The Registry shall consist of a Registrar, an officer in charge at the seat of each branch of the Mechanism designated by the Registrar, and such other qualified staff as may be required in accordance with paragraph 4 of this Article. The Registrar shall be present at either seat of the branches of the Mechanism as necessary to exercise his or her functions.

3. The Registrar shall be appointed by the Secretary-General for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The Registry shall retain a small number of staff commensurate with the reduced functions of the Mechanism, who shall serve at the seat of the respective branches of the Mechanism. The Registry shall maintain a roster of qualified potential staff, preferably from among persons with experience at the ICTY or the ICTR, to enable it to recruit additional staff rapidly as may be required to perform its functions. The Staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

### **Article 16: Investigation and Preparation of Indictment**

1. The Prosecutor shall have the power to conduct investigations against persons covered by Article 1 of this Statute. The Prosecutor shall not have the power to prepare new indictments against persons other than those covered by Article 1 of this Statute.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by Counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as necessary translation into and from the language he or she speaks and understands.

4. Upon a determination that a *prima facie* case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to the duty judge or a Single Judge designated by the President.

### **Article 17: Review of the Indictment**

1. The indictment shall be reviewed by the duty judge or a Single Judge designated by the President. If satisfied that a *prima facie* case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

### **Article 18: Commencement and Conduct of Trial Proceedings**

1. The Single Judge or Trial Chamber conducting a trial shall ensure that the trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the Mechanism, be taken into custody, immediately informed of the charges against him or her and transferred to the Mechanism.

3. The Single Judge or judge of the Trial Chamber designated by the President shall read the indictment, ensure that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Single Judge or Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Single Judge or Trial Chamber decides to close the proceedings in accordance with its Rules of Procedure and Evidence.

#### **Article 19: Rights of the Accused**

1. All persons shall be equal before the Mechanism.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to Article 20 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality—

- (a) to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
- (b) to have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
- (c) to be tried without undue delay;
- (d) to be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
- (e) to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
- (f) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Mechanism;
- (g) not to be compelled to testify against himself or herself or to confess guilt.

#### **Article 20: Protection of Victims and Witnesses**

The Mechanism shall provide in its Rules of Procedure and Evidence for the protection of victims and witnesses in relation to the ICTY, the ICTR, and the Mechanism. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

#### **Article 21: Judgments**

1. The Single Judge or Trial Chamber shall pronounce judgments and impose sentences and penalties on persons covered by Article 1 of this Statute who are convicted by the Mechanism.

2. All judgments shall be delivered in public and shall be accompanied by a reasoned opinion in writing. Judgments by a Chamber shall be rendered by a majority of the judges, to which separate or dissenting opinions may be appended.

## **Article 22: Penalties**

1. The penalty imposed on persons covered by paragraphs 2 and 3 of Article 1 of this Statute shall be limited to imprisonment. The penalty imposed on persons covered by paragraph 4 of Article 1 of this Statute shall be a term of imprisonment not exceeding seven years, or a fine of an amount to be determined in the Rules of Procedure and Evidence, or both.

2. In determining the terms of imprisonment, the Single Judge or Trial Chamber shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia and in those of Rwanda, respectively.

3. In imposing the sentences, the Single Judge or Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

4. In addition to imprisonment, the Single Judge or Trial Chamber may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

## **Article 23: Appellate proceedings**

1. The Appeals Chamber shall hear appeals from convicted persons or from the Prosecutor on the following grounds—

- (a) an error on a question of law invalidating the decision; or
- (b) an error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Single Judge or Trial Chamber.

## **Article 24: Review Proceedings**

Where a new fact has been discovered which was not known at the time of the proceedings before the Single Judge, Trial Chamber or the Appeals Chamber of the ICTY, the ICTR, or the Mechanism and which could have been a decisive factor in reaching the decision, the convicted person may submit to the Mechanism an application for review of the judgment. The Prosecutor may submit such an application within one year from the day that the final judgment was pronounced. The Chamber shall only review the judgment if after a preliminary examination a majority of judges of the Chamber agree that the new fact, if proved, could have been a decisive factor in reaching a decision.

## **Article 25: Enforcement of sentences**

1. Imprisonment shall be served in a State designated by the Mechanism from a list of States with which the United Nations has agreements for this purpose. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the Mechanism.

2. The Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY, the ICTR or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States, and other agreements with international and regional organisations and other appropriate organisations and bodies.

## **Article 26: Pardon or Commutation of Sentences**

If, pursuant to the applicable law of the State in which the person convicted by the ICTY, the ICTR or the Mechanism is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. There shall only be pardon or commutation of sentence if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law.

## **Article 27: Management of the Archives**

1. Without prejudice to any prior conditions stipulated by, or arrangements with, the providers of information and documents, the archives of the ICTY, the ICTR and the Mechanism shall remain the property of the United Nations. These archives shall be inviolable wherever located pursuant to Section 4 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

2. The Mechanism shall be responsible for the management, including preservation and access, of these archives. The archives of the ICTY and the ICTR shall be co-located with the respective branches of the Mechanism.

3. . In managing access to these archives, the Mechanism shall ensure the continued protection of confidential information, including information concerning protected witnesses, and information provided on a confidential basis. For this purpose, the Mechanism shall implement an information security and access regime, including for the classification and declassification as appropriate of the archives.

## **Article 28: Cooperation and Judicial Assistance**

1. States shall cooperate with the Mechanism in the investigation and prosecution of persons covered by Article 1 of this Statute.

2. States shall comply without undue delay with any request for assistance or an order issued by a Single Judge or Trial Chamber in relation to cases involving persons covered by Article 1 of this Statute, including, but not limited to—

- (a) the identification and location of persons;
- (b) the taking of testimony and the production of evidence;
- (c) the service of documents;
- (d) the arrest or detention of persons;
- (e) the surrender or the transfer of the accused to the Mechanism.

3. The Mechanism shall respond to requests for assistance from national authorities in relation to investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of former Yugoslavia and Rwanda, including, where appropriate, providing assistance in tracking fugitives whose cases have been referred to national authorities by the ICTY, the ICTR, or the Mechanism.

## **Article 29: The Status, Privileges and Immunities of the Mechanism**

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the Mechanism, the archives of the ICTY, the ICTR and the Mechanism, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

2. The President, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law. The judges of the Mechanism shall enjoy the same privileges and immunities, exemptions and facilities when engaged on the business of the Mechanism.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this Article.

4. Defence counsel, when holding a certificate that he or she has been admitted as counsel by the Mechanism and when performing their official functions, and after prior notification by the Mechanism to the receiving State of their mission, arrival and final departure, shall enjoy the same privileges and immunities as are accorded to experts on mission for the United Nations under Article VI, Section 22, paragraphs (a) to (c), and Section 23, of the Convention referred to in

paragraph 1 of this Article. Without prejudice to their privileges and immunities, it is the duty of defence counsel enjoying such privileges and immunities to respect the laws and regulations of the receiving State.

5. Other persons, including the accused, required at the seats of the Mechanism, shall be accorded such treatment as is necessary for the proper functioning of the Mechanism.

#### **Article 30: Expenses of the Mechanism**

The expenses of the Mechanism shall be expenses of the Organisation in accordance with Article 17 of the Charter of the United Nations.

#### **Article 31: Working languages**

The working languages of the Mechanism shall be English and French.

#### **Article 32: Reports**

1. The President of the Mechanism shall submit an annual report of the Mechanism to the Security Council and to the General Assembly.

2. The President and Prosecutor shall submit six-monthly reports to the Security Council on the progress of the work of the Mechanism.

#### **EXPLANATORY NOTE**

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

This Order enables the United Kingdom to cooperate with the International Residual Mechanism for Criminal Tribunals in the investigation and prosecution of persons accused of Mechanism crimes and the punishment of persons convicted of such crimes. The Mechanism was established by United Nations Security Council resolution 1966 (2010) to complete the tasks of the international criminal tribunals for the former Yugoslavia and Rwanda.

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UK201802011020 02/2018 19585

<http://www.legislation.gov.uk/id/uksi/2018/187>