
STATUTORY INSTRUMENTS

2018 No. 187

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

PART 4

OTHER FORMS OF ASSISTANCE TO THE MECHANISM

United Kingdom evidence for Mechanism use

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

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

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

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

(3) If the relevant authority is satisfied—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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