
STATUTORY INSTRUMENTS

1996 No. 716

The United Nations (International Tribunal) (Former Yugoslavia) Order 1996

PART I

ARREST AND DELIVERY OF PERSONS TO THE INTERNATIONAL TRIBUNAL

Endorsement of warrants of arrest

4.—(1) Where the Secretary of State receives from the International Tribunal a warrant of arrest issued by the International Tribunal (including such a warrant issued or received before the commencement of this Order), the Secretary of State shall transmit the warrant to an appropriate judicial officer who shall, subject to paragraph (2), endorse the warrant for execution in any part of the United Kingdom.

(2) A warrant for the arrest of a person convicted by the International Tribunal shall not be endorsed under this article unless the purpose of the arrest is to enable him—

- (a) to be brought before the International Tribunal, or
- (b) to be taken to a place where he is to undergo imprisonment under a sentence of the International Tribunal.

Provisional warrants of arrest

5.—(1) Where the Secretary of State—

- (a) receives a request from the International Tribunal for the arrest of a person who is suspected or accused of having committed an International Tribunal crime or who has been convicted by the International Tribunal, and
- (b) the request is not accompanied by a warrant but is made on the grounds of urgency,

the Secretary of State shall transmit the request to a constable and direct the constable to apply for a warrant for the arrest of that person.

(2) On an application by a constable stating on oath that he has reason to believe—

- (a) that a request has been made on grounds of urgency by the International Tribunal for the arrest of a person who is suspected or accused of having committed an International Tribunal crime or who has been convicted by the International Tribunal,
- (b) that the person concerned is in or on his way to the United Kingdom, and
- (c) that the purpose of the arrest is to enable the person concerned to be brought before the International Tribunal or, as the case may be, to be taken to a place where he is to undergo imprisonment under a sentence of the International Tribunal,

an appropriate judicial officer may issue a warrant (“a provisional warrant”) for the arrest of that person, and shall if he issues such a warrant notify the Secretary of State that he has done so.

(3) In the application of paragraphs (1) and (2) to Scotland, the following modifications shall have effect—

- (a) the request by the International Tribunal shall be transmitted to the Lord Advocate, who shall instruct the procurator fiscal to apply for a warrant;
- (b) an application for a warrant shall be made by the procurator fiscal and shall be supported by a statement on oath made by a constable as respects the matters specified in paragraph (2);
- (c) if an appropriate judicial officer issues a warrant, he shall notify the Lord Advocate that he has done so.

(4) A person arrested under a provisional warrant shall be brought before a competent court so soon as is practicable, and—

- (a) if an endorsed warrant in respect of that person is produced to the court, the court shall proceed as if he had been arrested under that warrant, and article 6 shall apply accordingly,
- (b) if no such warrant is produced, the court may, pending the production of the warrant, remand him for not more than 18 days at a time, so however that the total period of remands does not exceed 40 days in all.

(5) If at any time an endorsed warrant relating to a person remanded under this article is produced to the court which remanded him, the court shall determine the period of remand and the person shall thereafter be treated as if arrested at that time under the endorsed warrant.

(6) If an endorsed warrant relating to a person remanded under this article is not produced within the period of the remand (including any extension of that period) to the court which remanded him, he shall be discharged by the court.

(7) In this article and in article 6 “endorsed warrant” means a warrant of arrest issued by the International Tribunal, endorsed in accordance with article 4.

Proceedings before competent court after arrest

6.—(1) So soon as is practicable after a person is arrested under an endorsed warrant, he shall be brought before a competent court; and the court shall, subject to the following provisions of this article, make the appropriate order and remand him until it is executed.

(2) Where the purpose of the arrest is to enable the person to be brought before the International Tribunal, the appropriate order is that the person be delivered up into the custody of the International Tribunal in accordance with arrangements made by the Secretary of State with the Registrar.

(3) Where the purpose of the arrest is to enable the person to be taken to a place where he is to undergo imprisonment under a sentence of the International Tribunal, the appropriate order is that the person be delivered up into the custody of the state where that place is situated in accordance with arrangements made by the Secretary of State with that state.

(4) If it is shown to the satisfaction of the competent court that other criminal proceedings (not being proceedings under the Extradition Act 1989⁽¹⁾ or the Backing of Warrants (Republic of Ireland) Act 1965⁽²⁾) 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 an International Tribunal 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 an International Tribunal crime,

(1) 1989 c. 33.

(2) 1965 c. 45.

the proceedings under this article shall be adjourned and the competent court may remand the arrested person until the other criminal proceedings have been finally determined or have been discontinued, as the case may be.

(5) An order shall not be made under paragraph (1) if it is shown to the satisfaction of the competent court—

- (a) that the document purporting to be a warrant issued by the International Tribunal is not such a warrant or that it has not been endorsed in accordance with article 4, or
- (b) that the person brought before the court is not the person named or described in the warrant, or
- (c) where the person has not been convicted by the International Tribunal of the offence specified in the warrant or any accompanying document, that the offence is not an International Tribunal crime, or
- (d) notwithstanding that the offence is an International Tribunal crime, that the person would if he were charged with it in the United Kingdom be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(6) If the competent court refuses to make an order under paragraph (1), it shall make an order remanding the person arrested until the Secretary of State, or in the case of proceedings in Scotland the procurator fiscal, has been notified of its decision and of the grounds thereof; and—

- (a) if the Secretary of State or the procurator fiscal, as the case may be, on being so notified immediately informs the court that he intends to question the decision on the ground that it is wrong in law, the order remanding the person arrested shall continue to have effect, except as otherwise provided by this Order, so long as the case is pending,
- (b) if the court is not so informed, the person arrested shall be discharged.

(7) Nothing in this Order shall be construed as requiring a competent court to be satisfied that there is evidence sufficient to warrant the trial of an accused person by the International Tribunal.

(8) Where a competent court makes an order under paragraph (1) in respect of a person—

- (a) who has been committed under section 9 of or paragraph 7 of Schedule 1 to the Extradition Act 1989, or
- (b) who has been ordered to be delivered up under section 2(1) of the Backing of Warrants (Republic of Ireland) Act 1965, or
- (c) in respect of whom an order, other than a sentence of imprisonment or detention, has been made in criminal proceedings which have been finally determined,

it may make such other order as is necessary to give effect to the endorsed warrant; 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 the person.

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 shall 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 the receipt of the application the clerk of the court shall send a draft stated case to the applicant and to the person to whom the warrant relates or his solicitor and shall allow each party 21 days from the date of the sending of the draft stated case within which to make representations on it;
 - (d) within 21 days after the latest day on which such representations may be made the court shall, 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 shall send the case to the applicant and send a copy of the case to the person to whom the warrant relates or his 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 shall have power—
- (a) to remit the case to the competent court to decide it according to 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 House of Lords, appeal to the House of Lords; and section 1 of the Administration of Justice Act 1960(3) (appeal to the House of Lords) shall apply 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 by virtue of article 6(6) shall cease to have effect if—
- (a) an application under paragraph (1) is not made by the Secretary of State within the period mentioned in paragraph (2)(a), or
 - (b) the High Court dismisses the application and the Secretary of State does not immediately either apply for leave to appeal to the House of Lords or inform the High Court that he intends to apply for leave, or
 - (c) the House of Lords refuses leave to appeal or dismisses the appeal.

Statement of case in Scotland

8.—(1) In the application of this Order to Scotland, article 7 shall be omitted and the provisions of this article shall have effect.

(2) If a competent court refuses to make a delivery order in relation to a person under article 6, the procurator fiscal 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 shall 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) within 21 days after the receipt of the application, the sheriff clerk shall send a draft stated case to the applicant and to the person to whom the warrant relates or his solicitor and the

court shall 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 court shall, on the motion of either party, or may, of its 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 court shall, after considering any such proposed adjustments and representations, state and sign the case and the sheriff clerk shall—
 - (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 the person to whom the warrant relates or his solicitor;
- (f) if any period of time specified in the foregoing provisions of this paragraph expires on a Saturday, Sunday or a court holiday prescribed for the competent court, the period shall be extended to expire on the next day which is not a Saturday, Sunday or such holiday.

(4) If the court 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 procurator fiscal, make an order requiring it to do so.

(5) The High Court of Justiciary shall have power—

- (a) to remit the case to the competent court to decide it according to the opinion of the High Court of Justiciary on the question of law, or
- (b) to dismiss the application.

(6) An order for the remand of an arrested person which continues to have effect by virtue of article 6(6) shall cease to have effect if—

- (a) an application under paragraph (2) is not made by the procurator fiscal within the period mentioned in paragraph (3)(a), or
- (b) an application to the High Court of Justiciary is dismissed pursuant to paragraph (5)(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 International Tribunal an order for the attendance before the International Tribunal of a person in the United Kingdom who—

- (a) has been served with a summons or other process under article 19 requiring him to appear before the International Tribunal for the purpose of giving evidence or assisting an investigation or for both purposes, 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 or the Lord Advocate shall transmit the order to an appropriate judicial officer, who shall issue a warrant for the arrest of the person named or described in the order.

(3) A person arrested in pursuance of a warrant issued under paragraph (2) shall be brought before a competent court as soon as practicable.

(4) If the competent court is satisfied that—

- (a) the person arrested is the person named or described in the warrant and in the order of the International Tribunal, and

(b) he has been served with a summons or other process under article 19 requiring him to appear before the International Tribunal, and

(c) he has failed to comply with the process,

the court shall order him to be delivered up, in accordance with arrangements made by the Secretary of State with the Registrar, into the custody of the International Tribunal and shall remand him until the order has been executed.

(5) If the competent court does not make an order under paragraph (4) and the person arrested is not remanded, the court shall order his discharge.

Transfer of prisoner to give evidence or to assist in investigations

10.—(1) This article applies where the Secretary of State receives a request from the International Tribunal for the transfer of a prisoner into the custody of the International Tribunal for the purpose of giving evidence or assisting an investigation or for both purposes.

(2) If the prisoner consents to the transfer, the Secretary of State shall issue a warrant (“a transfer warrant”) requiring the prisoner to be delivered up, in accordance with arrangements made by the Secretary of State with the Registrar, into the custody of the International Tribunal.

(3) The consent of a prisoner for the purposes of paragraph (2) may be given either—

(a) by the prisoner himself, or

(b) in circumstances in which it appears to the Secretary of State inappropriate, by reason of the prisoner’s physical or mental condition or his youth, for him to act for himself, by a person appearing to the Secretary of State to be an appropriate person to act on his behalf.

but a consent once given shall not be capable of being withdrawn after the issue of the transfer warrant.

(4) If the prisoner, or the person acting on his behalf, refuses consent to the transfer, the prisoner shall, as soon as is practicable, be brought before a competent court.

(5) If the competent court is satisfied that the prisoner is the person named or described in the request of the International Tribunal, the court shall order him to be delivered up, in accordance with arrangements made by the Secretary of State with the Registrar, into the custody of the International Tribunal.

(6) If an order is made under paragraph (5) the prisoner shall be remanded until it has been executed; and if no such order is made the prisoner shall be transferred in custody to the place where he is liable to be detained under the sentence to which he is subject.

(7) 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 shall be construed accordingly.

Review of orders of competent court

11.—(1) Where a delivery order is made by a competent court in respect of any person—

(a) he shall 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, unless he gives notice in accordance with paragraph (4) that he consents to his earlier delivery up;

(b) if within that period an application is made by him or on his behalf for a writ of *habeas corpus ad subjiciendum* or, in the case of an order made in Scotland, an application for review is made by him under paragraph (2), he shall not be so delivered up while proceedings on the application are pending;

and the competent court shall inform him that he will not be delivered up under the order during the said period of 15 days unless he gives notice as aforesaid, and that he has the right to apply for a writ of *habeas corpus ad subjiciendum* or, as the case may be, to make an application for review under paragraph (2).

(2) A delivery order made by the competent court in Scotland may be reviewed by the High Court of Justiciary in the same manner as an appeal against a summary conviction.

(3) For the purposes of this article proceedings on an application for a writ of *habeas corpus ad subjiciendum* shall be treated as pending until any appeal in those proceedings is disposed of; and an appeal shall 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.

(4) Where notice is given by a person consenting to his earlier delivery up—

- (a) the notice shall be signed in the presence of a justice of the peace or in Scotland of a sheriff or justice of the peace;
- (b) a notice given by a person in custody shall be delivered to the governor of the prison;
- (c) a notice given by a person on bail shall be delivered to the police officer in charge of the police station specified in his recognisance or in Scotland to the Crown Agent, Crown Office, Edinburgh;

and the delivery of a notice given by a person on bail shall be 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) of this paragraph.

(5) It shall be the duty of the person 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 the proceedings shall for the purposes of section 4 of the Bail Act 1976(4) (general right to bail) be treated as proceedings against a fugitive offender as defined in section 2(2) of that Act(5); and the court may—

- (a) remand him in custody, that is to say, commit him 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 the person, if released on bail, would fail to surrender to custody, remand him on bail in accordance with the Bail Act 1976, that is to say, direct him to surrender himself 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 the person so remanded,

but nothing in this paragraph shall be taken as authorising the remand on bail of a person who is serving a term of imprisonment or detention to which he has been sentenced by a national court.

(2) Where a person's release on bail is conditional on his 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 his entering into his recognisance subsequently in accordance with subsections (4) and (5) or (6) of that section the court shall in the meantime commit him to the custody of a constable.

(4) 1976 c. 63; section 4 was amended by the Magistrates' Courts Act 1980 (c. 43), section 154(1) and Schedule 7 paragraph 145, and by the Criminal Justice Act 1991 (c. 53), section 100 and Schedule 11 paragraph 21.

(5) Section 2(2) was amended by the Extradition Act 1989 (c. 33), section 36(3).

(3) The time to be appointed for the purposes of paragraph 1(b) shall 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 as aforesaid and the end of the period of remand he shall be treated as committed to the custody of the constable; but where it appears to the officer to whom he surrenders that the end of the period of remand will be unexpectedly delayed—

(a) the officer shall grant him bail in accordance with the Bail Act 1976 subject to a duty to surrender himself 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 the person on remand, and

(b) the time to be appointed for that purpose shall 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 fails to surrender as aforesaid, the court by which he was remanded may issue a warrant for his arrest; and on his arrest under the warrant paragraph (4) shall apply as if he had surrendered to the officer in charge of the police station specified under paragraph (1)(b), but that officer shall not grant him bail unless he is satisfied that it is proper to do so.

(6) The foregoing provisions of this article shall not apply to Scotland.

Discharge of persons not delivered up

13.—(1) Where the International Tribunal informs the Secretary of State that a person arrested 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 imprisonment there, the Secretary of State, or if the person arrested is in Scotland the Lord Advocate, shall notify an appropriate judicial officer; and the appropriate judicial officer shall, on receipt of such notification, make an order for the discharge of the person arrested.

(2) If a person 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 within which it was made, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.

(3) In paragraph (2) “superior court” means the High Court or the High Court of Justiciary in Scotland.

(4) The Secretary of State shall revoke a transfer warrant if he is informed, before it has been executed, that the International Tribunal no longer requires the attendance of the prisoner to whom the warrant relates.