
STATUTORY INSTRUMENTS

1996 No. 716

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

PART III

OTHER FORMS OF ASSISTANCE TO THE INTERNATIONAL TRIBUNAL

Transmission of information and records

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

- (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 an International Tribunal 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 shall take such steps as appear to him to be appropriate to secure the production to him of the information or record requested and on its production to him shall transmit it to the International Tribunal.

Search etc. for material relevant to International Tribunal investigation

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

- (a) references to serious arrestable offences in section 8 of and Schedule 1 to that Act included any conduct which constitutes an International Tribunal crime and which would constitute a serious arrestable 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 International Tribunal or that a person has been arrested in the course of an investigation by the International Tribunal, and
 - (b) that the conduct constituting the International Tribunal crime which is the subject of the proceedings or investigation would constitute an arrestable offence within the meaning of the said Act of 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 International Tribunal crime other than items subject to legal privilege within the meaning of that Act, he 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 purpose of discovering such evidence as is there mentioned.

(4) No application for a warrant or order shall be made by virtue of paragraph (1) or (2) except in pursuance of a direction given by the Secretary of State in response to a request received from the International Tribunal, and any evidence seized by a constable by virtue of this article shall be furnished by him to the Secretary of State for transmission to the International Tribunal.

(5) If in order 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 shall 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 shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted as may be necessary in order 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 shall be substituted a reference to the Police and Criminal Evidence (Northern Ireland) Order 1989(2) and
- (b) for any reference to Part II and section 8 of and Schedule 1 to that Act there shall be substituted a reference to Part III and article 10 of and Schedule 1 to that Order.

Search, etc for material relevant to International Tribunal investigation: Scotland

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

(2) If, on an application made by the procurator fiscal, it appears to a sheriff—

- (a) that proceedings have been instituted for the indictment of a person by the International Tribunal or that a person has been arrested in the course of an investigation by the International Tribunal, and
- (b) that the conduct constituting the International Tribunal 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 shall have the like power to grant a warrant authorising entry, search and seizure by any constable as he would have at common law in respect of any offence punishable at common law in Scotland.

(3) No application for a warrant shall be made by virtue of paragraph (2) except in pursuance of a direction given by the Lord Advocate in response to a request received by the Secretary of State from the International Tribunal and any evidence seized by a constable by virtue of this article shall be furnished by him to the Lord Advocate for transmission to the International Tribunal.

(4) If in order 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 shall also furnish for transmission such document of that nature as may be specified in the direction given by the Lord Advocate.

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

United Kingdom evidence for International Tribunal use

18.—(1) This article applies where the Secretary of State receives from the International Tribunal a request for assistance in obtaining evidence in the United Kingdom in connection with proceedings that have been instituted before the International Tribunal or an investigation that is being carried on by it.

(2) If the Secretary of State or, if the evidence is to be obtained in Scotland, the Lord Advocate is satisfied—

- (a) that an International Tribunal 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 International Tribunal or that an investigation is being carried on by it,

he may, if he thinks fit, by notice in writing nominate a court in England, Wales or Northern Ireland or, as the case may be, Scotland to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

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

(4) For the purpose of proceedings before a nominated court—

- (a) paragraphs 1 to 3, 6 and 7 of Schedule 1 to the Criminal Justice (International Co-operation) Act 1990(3) shall have effect, and
- (b) paragraph 4 of that Schedule shall have 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 International Tribunal.

(5) 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.

(6) A nominated court shall 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 his testimony,

but save as authorised by the Secretary of State, or in Scotland the Lord Advocate, or with the leave of the court, the register shall not be open to inspection.

(7) The evidence received by the nominated court, together with a copy of the register of the proceedings, shall be furnished to the Secretary of State or, in Scotland, the Lord Advocate for transmission to the International Tribunal.

(8) If in order 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 shall also furnish for transmission such document of that nature as may be specified in the notice nominating the court.

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

Service of process

19.—(1) This article applies where the Secretary of State receives from the International Tribunal—

- (a) a summons or other process requiring a person (not being a prisoner) to appear before the International Tribunal for the purpose of giving evidence or assisting an investigation or for both purposes, or
- (b) a document notifying interested parties of a special hearing to determine the matter of restitution of specified property or the proceeds thereof 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 in the United Kingdom.

(2) The Secretary of State or, where the person to be served 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 for the area in which that person appears to be to cause it to be personally served on him.

(3) Service by virtue of this article of any process mentioned in paragraph (1)(a) imposes an obligation to comply with it; and any such process shall be accompanied by a notice stating the effect of this paragraph and of article 9 (securing attendance of person as witness or to assist in investigations).

(4) Any document mentioned in paragraph (1)(b) shall indicate that the person on whom it is served may wish to seek advice as to the possible consequences of failing to justify a claim.

(5) Where a chief officer of police is directed under this article to cause any process or document to be served he shall after it has been served forthwith inform the Secretary of State or, as the case may be, the Lord Advocate when and how it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if the chief officer has been unable to cause the process or document to be served he shall forthwith inform the Secretary of State or, as the case may be, the Lord Advocate of that fact and of the reason.

(6) In the application of this article to Northern Ireland, for references to the chief officer of police there shall be substituted references to the Chief Constable of the Royal Ulster Constabulary.

Enforcement of orders for the preservation or restitution of property

20.—(1) Where the Secretary of State receives from the International Tribunal—

- (a) an order for provisional measures for the preservation and protection of property or the proceeds of property, or
- (b) an order for the restitution of property or the proceeds of property,

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

(2) The court shall register the order on the application of the person entitled to enforce it; but—

- (a) where it is shown that an order has been partly complied with at the date of application for its registration, the court shall register the order only so far as it has not been complied with at that date, and

- (b) where, after the date of registration of an order, it is shown that the order had been partly or wholly complied with at that date, the court shall vary or cancel the registration of the order accordingly with effect from that date.
- (3) For the purposes of enforcement of an order registered under this article—
 - (a) the order shall have the same force and effect,
 - (b) the court shall have 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.
- (4) Where the International Tribunal makes an order (a “suspending order”) that enforcement of a registered order be suspended, the suspending order shall, on its production to the court, be registered immediately; and—
 - (a) the suspending order shall have 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 shall be taken to enforce the original registered order.
- (5) The reasonable costs and expenses of and incidental to the registration of an order under this article (including any variation or cancellation of the registration) shall be recoverable as if they were sums recoverable under the order.
- (6) In this article and article 21 “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.

Proceedings to determine the ownership of property

21. Where the Secretary of State receives a request from the International Tribunal to determine the ownership of property or the proceeds of property, he, or in relation to Scotland the Lord Advocate, may make an application to the court for a decision as to the ownership of the property or proceeds.

Immunities and privileges

22.—(1) The International Tribunal, the judges, the Prosecutor and his staff and the Registrar and his staff shall enjoy the immunities and privileges set out in the United Nations and International Court of Justice (Immunities and Privileges) Order 1974(4) (“the 1974 Order”) as follows—

- (a) the International Tribunal shall 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 judges, the Prosecutor and the Registrar shall enjoy the immunities and privileges set out in article 15(1) and (2) of the 1974 Order as they apply to high officers of the United Nations;
- (c) staff of the Prosecutor and of the Registrar shall enjoy the immunities and privileges set out in article 16 of the 1974 Order as they apply to officers of the United Nations.

(2) Except in so far as in any particular case any immunity is waived by the International Tribunal, counsel, advocates, solicitors and witnesses shall enjoy immunity from suit and legal process in

(4) [S.I. 1974/1261](#), amended by [S.I. 1975/1209](#).

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respect of words spoken or written and documents or other evidence submitted by them before or to the International Tribunal.