
STATUTORY INSTRUMENTS

2018 No. 187

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

PART 2

ARREST AND DELIVERY OF PERSONS TO THE MECHANISM

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).