
STATUTORY INSTRUMENTS

2018 No. 187

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

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⁽¹⁾ (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⁽²⁾ apply as if the proceedings were proceedings for dealing with an individual under the Extradition Act 2003.

(1) 1985 c. 23. There are amendments to section 16, but none relevant to this Order.

(2) 2012 c.10. There are amendments, but none relevant to this Order.

(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(3) relating to such proceedings or any appellate proceedings following on them apply to that person.

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(4);
- (b) any British-controlled aircraft or hovercraft, within the meaning of section 92 of the Civil Aviation Act 1982(5) or that section as applied to hovercraft by provision made under the Hovercraft Act 1968(6); 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.

(3) 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.

(4) 1995 c. 21. There are amendments, but none relevant to this Order.

(5) 1992 c. 16. There are amendments to section 92, but none relevant to this Order.

(6) 1968 c. 59.

(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
 - (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.