



# International Criminal Court Act 2001

## 2001 CHAPTER 17

### PART 2

#### ARREST AND DELIVERY OF PERSONS

##### *Proceedings on request*

## **2 Request for arrest and surrender**

- (1) Where the Secretary of State receives a request from the ICC for the arrest and surrender of a person alleged to have committed an ICC crime, or to have been convicted by the ICC, he shall transmit the request and the documents accompanying it to an appropriate judicial officer.
- (2) If it appears to the Secretary of State that the request should be considered by an appropriate judicial officer in Scotland, he shall transmit the request and the documents accompanying it to the Scottish Ministers who shall transmit them to an appropriate judicial officer.
- (3) If the request is accompanied by a warrant of arrest and the appropriate judicial officer is satisfied that the warrant appears to have been issued by the ICC, he shall endorse the warrant for execution in the United Kingdom.
- (4) If in the case of a person convicted by the ICC the request is not accompanied by a warrant of arrest, but is accompanied by—
  - (a) a copy of the judgment of conviction,
  - (b) information to demonstrate that the person sought is the one referred to in the judgment of conviction, and
  - (c) where the person sought has been sentenced, a copy of the sentence imposed and a statement of any time already served and the time remaining to be served,

the officer shall issue a warrant for the arrest of the person to whom the request relates.

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- (5) In this Part a warrant endorsed or issued under this section is referred to as a “section 2 warrant”.

### **3 Request for provisional arrest**

- (1) This section applies where the Secretary of State receives from the ICC a request for the provisional arrest of a person alleged to have committed an ICC crime or to have been convicted by the ICC.
- (2) If it appears to the Secretary of State that application for a warrant should be made in England and Wales—
- (a) he shall transmit the request to a constable and direct the constable to apply for a warrant for the arrest of that person, and
  - (b) on an application by a constable stating on oath that he has reason to believe—
    - (i) that a request has been made on grounds of urgency by the ICC for the arrest of a person, and
    - (ii) that the person is in, or on his way to, the United Kingdom,an appropriate judicial officer shall issue a warrant for the arrest of that person.
- (3) If it appears to the Secretary of State that application for a warrant should be made in Scotland—
- (a) he shall transmit the request to the Scottish Ministers who shall instruct the procurator fiscal to apply for a warrant for the arrest of that person, and
  - (b) on the application by the procurator fiscal, which shall state—
    - (i) that a request has been made on grounds of urgency by the ICC for the arrest of a person, and
    - (ii) that the person is in, or on his way to, Scotland,an appropriate judicial officer shall issue a warrant for the arrest of that person.
- (4) Where an appropriate judicial officer issues a warrant under this section, he shall notify the Secretary of State and, where the proceedings are in Scotland, the Scottish Ministers that he has done so.
- (5) In this Part a warrant issued under this section is referred to as a “provisional warrant”.

### **4 Dealing with person arrested under provisional warrant**

- (1) A person arrested under a provisional warrant shall be brought before a competent court as soon as is practicable.
- (2) If there is produced to the court a section 2 warrant in respect of that person, the court shall proceed as if he had been arrested under that warrant.
- (3) If no such warrant is produced, the court shall remand him pending the production of such a warrant.
- (4) Provision shall be made by Order in Council under paragraph 3 of Schedule 1 (power to make provision to give effect to Rules of Evidence and Procedure) specifying—
- (a) the period for which a person may be so remanded at any time, and
  - (b) the total period for which a person may be so remanded,
- having regard to the time limits specified in Rules of Evidence and Procedure for the purposes of article 92.3.

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- (5) If at any time when the person is so remanded there is produced to the court a section 2 warrant in respect of him—
  - (a) the court shall terminate the period of remand, and
  - (b) he shall be treated as if arrested under that warrant—
    - (i) if he was remanded in custody, at the time the warrant was produced to the court;
    - (ii) if he was remanded on bail, when he surrenders to his bail.
- (6) If no such warrant is produced to the court before the end of the period of the remand (including any extension of that period), the court shall discharge him.
- (7) The fact that a person has been discharged under this section does not prevent his subsequent arrest under a section 2 warrant.

## **5 Proceedings for delivery order**

- (1) A person arrested under a section 2 warrant shall be brought before a competent court as soon as is practicable.
- (2) If the competent court is satisfied—
  - (a) that the warrant—
    - (i) is a warrant of the ICC and has been duly endorsed under section 2(3),  
or
    - (ii) has been duly issued under section 2(4), and
  - (b) that the person brought before the court is the person named or described in the warrant,it shall make a delivery order.
- (3) A “delivery order” is an order that the person be delivered up—
  - (a) into the custody of the ICC, or
  - (b) if the ICC so directs in the case of a person convicted by the ICC, into the custody of the state of enforcement,in accordance with arrangements made by the Secretary of State.
- (4) In the case of a person alleged to have committed an ICC crime, the competent court may adjourn the proceedings pending the outcome of any challenge before the ICC to the admissibility of the case or to the jurisdiction of the ICC.
- (5) In deciding whether to make a delivery order the court is not concerned to enquire—
  - (a) whether any warrant issued by the ICC was duly issued, or
  - (b) in the case of a person alleged to have committed an ICC crime, whether there is evidence to justify his trial for the offence he is alleged to have committed.
- (6) Whether or not it makes a delivery order, the competent court may of its own motion, and shall on the application of the person arrested, determine—
  - (a) whether the person was lawfully arrested in pursuance of the warrant, and
  - (b) whether his rights have been respected.
- (7) In making a determination under subsection (6) the court shall apply the principles which would be applied on an application for judicial review.
- (8) If the court determines—

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(a) that the person has not been lawfully arrested in pursuance of the warrant, or  
 (b) that the person's rights have not been respected,  
 it shall make a declaration or declarator to that effect, but may not grant any other relief.

(9) The court shall notify the Secretary of State (and, where the proceedings are in Scotland, the Scottish Ministers) of any declaration or declarator under subsection (8) and the Secretary of State shall transmit that notification to the ICC.

## 6 Supplementary provisions as to proceedings before competent court

(1) The following provisions apply in relation to proceedings before a competent court under section 5.

(2) In the case of proceedings in England and Wales—

- (a) the court has the like powers, as nearly as may be, including power to adjourn the case and meanwhile to remand the person whose surrender is sought, as if the proceedings were the summary trial of an information against that person;
- (b) if the court adjourns the proceedings, it shall on doing so remand the person whose surrender is sought;
- (c) the proceedings are criminal proceedings for the purposes of Part 1 of the Access to Justice Act 1999 (c. 22) (advice, assistance and representation);
- (d) section 16(1)(c) of the Prosecution of Offences Act 1985 (c. 23) (defence costs on dismissal of proceedings) applies, reading the reference to the dismissal of the information as a reference to the discharge of the person arrested.

(3) In the case of proceedings in Scotland—

- (a) the court has the like powers, including power to adjourn the case and meanwhile to remand the person whose surrender is sought, and the proceedings shall be conducted as nearly as may be in the like manner, as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by that person;
- (b) the provisions of the Legal Aid (Scotland) Act 1986 (c. 47) relating to such proceedings, or any appeal proceedings following thereon, apply to that person.

## 7 Consent to surrender

(1) A person arrested under this Part may consent to being delivered up into the custody of the ICC or, in the case of a person convicted by the ICC, of the state of enforcement.

This is referred to below as “consent to surrender”.

(2) Consent to surrender may be given—

- (a) by the person himself, or
- (b) in circumstances in which it is inappropriate for the person to act for himself, by reason of his physical or mental condition or his youth, by an appropriate person acting on his behalf.

(3) Consent to surrender must—

- (a) be given in writing in the prescribed form or a form to the like effect, and
- (b) be signed in the presence of a justice of the peace or, in Scotland, a sheriff.

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The “prescribed form” means that prescribed by [<sup>F1</sup>Criminal Procedure Rules] or, in Scotland, by the High Court of Justiciary by Act of Adjournal.

- (4) Where consent to surrender has been given—
- (a) a competent court before which the person is brought shall forthwith make a delivery order, and
  - (b) he shall be taken to have waived his rights under section 12 (right to review of delivery order).
- (5) Where consent to surrender has been given, notice of that fact shall be given—
- (a) if the person is in custody, to the prison governor, constable or other person in whose custody he is;
  - (b) if the person is on bail in England and Wales, to the officer in charge of the police station at which he is required to surrender to custody.
- (6) For the purposes of subsection (5)(b) notice shall be treated as given if it is sent by registered post, or recorded delivery, addressed to the officer mentioned.

#### Textual Amendments

- F1** Words in s. 7(3) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 109\(1\), Sch. 8 para. 403\(a\)](#); [S.I. 2005/910, art. 3](#)

#### Commencement Information

- II** Act wholly in force at 1.9.2001; Act not in force at Royal Assent see [s. 82](#); Act in force for specified purposes at 13.6.2001 and otherwise 1.9.2001 by [S.I. 2001/2161, arts. 2, 3](#) (as amended (25.6.2001) by [S.I. 2001/2304, art. 2](#))

### *Proceedings where court refuses delivery order*

## **8 Procedure where court refuses order**

- (1) If a competent court refuses to make a delivery order, it shall—
- (a) make an order remanding the person arrested, and
  - (b) notify the Secretary of State and, in the case of proceedings in Scotland, the Scottish Ministers of its decision and of the grounds for it.
- (2) If the court is informed without delay that an appeal is to be brought under section 9 or 10, the order remanding the person arrested shall continue to have effect.
- (3) If the court is not so informed, it shall discharge the person arrested.

## **9 Appeal against refusal of delivery order: England and Wales**

- (1) If a competent court in England and Wales refuses to make a delivery order, the Secretary of State may appeal against the decision to the High Court.
- No permission is required for such an appeal, which shall be by way of re-hearing.
- (2) If the High Court allows the appeal it may—
- (a) make a delivery order, or

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- (b) remit the case to the competent court to make a delivery order in accordance with the decision of the High Court.
- (3) If the High Court dismisses the appeal, the Secretary of State may, with the permission of the High Court or the House of Lords, appeal to the House of Lords.

In relation to a decision of the High Court on an appeal under this section, section 1 of the Administration of Justice Act 1960 (c. 65) (appeals to the House of Lords) applies with the omission of so much of subsection (2) of that section as restricts the grant of leave to appeal.

- (4) The House of Lords may exercise any of the powers conferred on the High Court by subsection (2) above.
- (5) Where a delivery order is made by the High Court or the House of Lords, the provisions of section 11(1)(a) and (c), (2) and (3) (procedure where court makes delivery order) apply in relation to that court as they apply to a competent court in England and Wales which makes a delivery order.
- (6) An order for the remand of the arrested person which continues in force under section 8(2) shall cease to have effect if the High Court dismisses the appeal and the Secretary of State does not without delay—
  - (a) apply for permission to appeal to the House of Lords, or
  - (b) inform the High Court that he intends to apply for such permission.

Subject to that, any such order shall have effect so long as the case is pending.

For this purpose a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to allow a step to be taken out of time) there is no step that the Secretary of State can take.

## **10 Appeal against refusal of delivery order: Scotland**

- (1) If a competent court in Scotland refuses to make a delivery order, the procurator fiscal may appeal against the decision to the High Court of Justiciary by note of appeal.
- (2) If the High Court of Justiciary allows the appeal it may—
  - (a) make a delivery order, or
  - (b) remit the case to the competent court to make a delivery order in accordance with the decision of the High Court of Justiciary.
- (3) Where a delivery order is made by the High Court of Justiciary, the provisions of section 11(1)(a) and (c), (2) and (3) (procedure where court makes delivery order) apply in relation to that court as they apply to a competent court in Scotland which makes a delivery order.
- (4) An order for the remand of the arrested person which continues in force under section 8(2) shall cease to have effect if the High Court of Justiciary dismisses the appeal.

Subject to that, any such order shall have effect so long as the case is pending.

For this purpose a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to allow a step to be taken out of time) there is no step that the procurator fiscal can take.

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- (5) In relation to an appeal under this section the High Court of Justiciary may make an order providing for the detention of the person to whom it relates or may grant bail.
- (6) Section 177(2) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (disposal of the application for bail) applies for the purposes of such an appeal as it applies for the purposes of an appeal such as is mentioned in section 176 of that Act.

#### *Proceedings where court makes delivery order*

### **11 Procedure where court makes order**

- (1) Where a competent court makes a delivery order in respect of a person, the court shall—
  - (a) commit the person to custody or on bail to await the Secretary of State's directions as to the execution of the order,
  - (b) inform the person of his rights under section 12 (right to review of delivery order) in ordinary terms and in a language which appears to the court to be one which he fully understands and speaks, and
  - (c) notify the Secretary of State and, in the case of proceedings in Scotland, the Scottish Ministers of its decision.
- (2) A person committed to custody under subsection (1)(a) shall be committed to prison or to the custody of a constable.
- (3) A court which commits a person to custody under subsection (1)(a) may subsequently grant bail.

### **12 Right to review of delivery order**

- (1) The Secretary of State shall not give directions for the execution of a delivery order until after the end of the period of 15 days beginning with the date on which the order is made.

This does not apply if the person in respect of whom the order is made—

- (a) waives his rights under this section (see section 13), or
  - (b) is taken to have done so (see section 7(4)(b)).
- (2) If before the end of that period an application for habeas corpus is made by the person in respect of whom the delivery order is made, or on his behalf, directions for the execution of the order shall not be given while proceedings on the application are still pending.
- (3) Proceedings on any such application shall be treated as pending until they are discontinued or there is no further possibility of an appeal.

For this purpose any power of a court to allow an appeal out of time shall be disregarded.

- (4) On an application for habeas corpus to which this section applies—
  - (a) the court shall set aside the delivery order and order the person's discharge if it is not satisfied of the matters mentioned in section 5(2), and
  - (b) the provisions of section 5(4) to (9) apply in relation to the court to which the application is made as they apply to the court that made the delivery order

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(but with the substitution in section 5(6) for “makes a delivery order” of “sets aside the delivery order”).

- (5) In the application of this section to Scotland references to an application for habeas corpus shall be read as references to the presentation of a Bill of Suspension.

### 13 Waiver of right to review

- (1) A person in respect of whom a delivery order has been made may waive his right to review of the order.
- (2) Waiver of the right to review may be made—
- (a) by the person himself, or
  - (b) in circumstances in which it is inappropriate for the person to act for himself, by reason of his physical or mental condition or his youth, by an appropriate person acting on his behalf.
- (3) Waiver of the right to review must—
- (a) be made in writing in the prescribed form or a form to the like effect, and
  - (b) be signed in the presence of a justice of the peace or, in Scotland, a sheriff.
- The “prescribed form” means that prescribed by [<sup>F2</sup>Criminal Procedure Rules] or, in Scotland, by the High Court of Justiciary by Act of Adjournal.
- (4) Where a person has waived his right to review of the delivery order—
- (a) no such application as is mentioned in section 12 may be made, and
  - (b) the order shall be taken for all purposes to be validly made.
- (5) Where a person has waived his right to review, notice of that fact shall be given—
- (a) if the person is in custody, to the prison governor, constable or other person in whose custody he is;
  - (b) if the person is on bail in England and Wales, to the officer in charge of the police station at which he is required to surrender to custody.
- (6) For the purposes of subsection (5)(b) notice shall be treated as given if it is sent by registered post, or recorded delivery, addressed to the officer mentioned.

#### Textual Amendments

- F2** Words in s. 13(3) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 109(1), Sch. 8 para. 403(a); S.I. 2005/910, art. 3

#### Commencement Information

- I2** Act wholly in force at 1.9.2001; Act not in force at Royal Assent see s. 82; Act in force for specified purposes at 13.6.2001 and otherwise 1.9.2001 by S.I. 2001/2161, arts. 2, 3 (as amended (25.6.2001) by S.I. 2001/2304, art. 2)

### *Warrants, custody, bail and related matters*

### 14 Effect of warrant of arrest

- (1) For the purposes of any enactment or rule of law relating to warrants of arrest—



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(a) a section 2 warrant endorsed or issued in any part of the United Kingdom, or  
(b) a provisional warrant issued in any part of the United Kingdom,  
shall be treated as if it were a warrant for the arrest of a person for an offence committed in that part of the United Kingdom.

(2) Any such warrant may be executed in any part of the United Kingdom, and may be so executed by any person to whom it is directed or by any constable.

(3) A person arrested under any such warrant shall be deemed to continue in legal custody until, in accordance with this Part, he is brought before a competent court.

## **15 Effect of delivery order**

(1) A delivery order is sufficient authority for any person acting in accordance with the directions of the Secretary of State to receive the person to whom the order relates, keep him in custody and convey him to the place where he is to be delivered up into the custody of the ICC (or, as the case may be, of the state of enforcement) in accordance with arrangements made by the Secretary of State.

(2) A person in respect of whom a delivery order is in force is deemed to be in legal custody at any time when, being—

- (a) in the United Kingdom, or
- (b) on board a British ship, a British aircraft or a British hovercraft,

he is being taken under the order to or from any place or is being kept in custody pending his delivery up under the order.

(3) A person authorised for the purposes of a delivery order to take the person to whom the order relates to or from any place or, to keep him in custody, has all the powers, authority, protection and privileges—

- (a) if he is in the United Kingdom, of a constable in that part of the United Kingdom, or
- (b) if he 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.

(4) If a person in respect of whom a delivery order is in force escapes or is unlawfully at large, he may be arrested without warrant by a constable and taken to any place where or to which, by virtue of this Part, he is required to be or to be taken.

(5) For the purposes of subsection (4) a “constable” means—

- (a) a person who is a constable in any part of the United Kingdom, and
- (b) in relation to any place, a person who, at that place, has, under any enactment (including subsection (3)), the powers of a constable in any part of the United Kingdom.

## **16 Bail and custody: general**

(1) Where under this Part a court has power to remand a person, the court may—

- (a) remand him in custody, that is, commit him for the period of the remand to prison or to the custody of a constable, or
- (b) if an application for bail is made to the court, remand him on bail, that is, direct him to surrender himself into the custody of the officer in charge of a specified police station at the time appointed for him to do so.

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- (2) The provisions of the Bail Act 1976 (c. 63) apply to proceedings under this Part in England and Wales as to proceedings against a fugitive offender.
- (3) The time appointed under subsection (1)(b) for a person to surrender to custody—
  - (a) shall be a time appointed by the officer in charge of the specified police station and notified in writing to the person remanded, and
  - (b) shall not be more than 24 hours before the time at which it appears to that officer that the period of remand is likely to end.
- (4) Where under this Part a court in Scotland has power to remand a person and the person makes an application to the court for bail, the court may admit him to bail and shall have the like powers in doing so as it has in proceedings in respect of an offence alleged to have been committed by him.
- (5) Nothing in this Part shall be taken as authorising a court to grant bail to a person who is serving a sentence of imprisonment or detention to which he has been sentenced by a national court, or who is in custody awaiting trial or sentence by a national court.

## **17 Bail and custody (England and Wales): supplementary**

- (1) The following provisions apply where a person is granted bail under this Part by a competent court in England and Wales.
- (2) Where a court—
  - (a) grants bail but is unable to release the person because no surety or suitable surety is available, and
  - (b) fixes the amount in which the surety is to be bound with a view to the recognizance of the surety being entered into subsequently,
 the court shall in the meantime commit the person to the custody of a constable.
- (3) During the period between the surrender of a person to custody and the end of the period of remand he shall be treated as committed to the custody of the constable to whom he surrenders.
- (4) Where it appears to that officer that the end of the period of remand will be unexpectedly delayed, he shall grant the person bail subject to a duty to surrender himself into the custody of the officer in charge of the specified police station at the time appointed for him to do so.

The time appointed under this subsection for the person to surrender to custody—

- (a) shall be a time to be appointed by the officer in charge of the specified police station and notified in writing to the person remanded, and
  - (b) shall not be more than 24 hours before the time at which it appears to that officer that the period of remand is likely to end.
- (5) If a person required to surrender to custody in accordance with subsection (4) fails to do so—
    - (a) the court by which he was remanded may issue a warrant for his arrest,
    - (b) provisions of section 14 (effect of warrant of arrest) apply in relation to the warrant, and
    - (c) on his arrest the person shall be brought before the court which shall reconsider the question of bail.

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- (6) In this section “the specified police station” means the police station specified by the competent court under section 16(1)(b).

## **18 Bail and custody: consultation with the ICC, &c**

- (1) Where an application for bail is made in proceedings under this Part in England and Wales—
- (a) the court shall notify the Secretary of State of the application,
  - (b) the Secretary of State shall consult with the ICC, and
  - (c) bail shall not be granted without full consideration of any recommendations made by the ICC.
- (2) Where an application for bail is made in proceedings under this Part in Scotland—
- (a) the court shall notify the Scottish Ministers of the application,
  - (b) the Scottish Ministers shall notify the Secretary of State who shall consult with the ICC and shall notify the Scottish Ministers of any recommendations made by the ICC, and
  - (c) bail shall not be granted without full consideration of any such recommendations.
- (3) In considering any such application as is mentioned in subsection (1) or (2) the court shall consider—
- (a) whether, given the gravity of the offence or offences he is alleged to have committed or, as the case may be, of which he has been convicted by the ICC, there are urgent and exceptional circumstances justifying release on bail, and
  - (b) whether any necessary measures have been or will be taken to secure that the person will surrender to custody in accordance with the terms of his bail.

## **19 Discharge of person not delivered up**

- (1) If the 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, an application may be made, by him or on his behalf, for his discharge.
- (2) The application shall be made—
- (a) in the case of an order made in England and Wales, to the High Court;
  - (b) in the case of an order made in Scotland, to the High Court of Justiciary.
- (3) On an application under this section the court shall order the person’s discharge unless reasonable cause is shown for the delay.

## **20 Discharge of person no longer required to be surrendered**

- (1) Where the ICC informs the Secretary of State that a person arrested under this Part is no longer required to be surrendered—
- (a) the Secretary of State shall notify an appropriate judicial officer of that fact, and
  - (b) that officer shall, on receipt of the notification, make an order for his discharge.

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- (2) Where the person was arrested in Scotland, the Secretary of State shall inform the Scottish Ministers who shall notify an appropriate judicial officer.

*Request for transit and unscheduled landing*

**21 Request for transit**

- (1) This section applies where the Secretary of State receives a request from the ICC for transit of a person being surrendered by another state.
- (2) If the Secretary of State accedes to the request—
- (a) the request shall be treated for the purposes of this Part as if it were a request for that person's arrest and surrender,
  - (b) the warrant accompanying the request shall be deemed to have been endorsed under section 2(3), and
  - (c) the person to whom the request relates shall be treated on arrival in the United Kingdom as if he had been arrested under that warrant.
- (3) In relation to a case where this section applies—
- (a) the reference in section 5(2)(a)(i) to the warrant having been duly endorsed under section 2(3) shall be read as a reference to the Secretary of State having acceded to the request for transit; and
  - (b) section 12(1) (right to review of delivery order: period for making application) shall have effect as if the reference to 15 days (the period during which directions to execute delivery order are not to be given) were a reference to two days.
- (4) A person in transit under this section shall not be granted bail.

**22 Unscheduled landing**

- (1) If a person being surrendered by another state makes an unscheduled landing in the United Kingdom, he may be arrested by any constable and shall be brought before a competent court as soon as is practicable.
- (2) The court shall remand him in custody pending—
- (a) receipt by the Secretary of State of a request from the ICC for his transit, and
  - (b) the Secretary of State's decision whether to accede to the request.
- (3) If no such request is received by the Secretary of State before the end of the period of 96 hours beginning with the time of the arrested person's unscheduled landing—
- (a) the Secretary of State shall forthwith notify the court of that fact, and
  - (b) the court shall, on receipt of the notification, discharge the arrested person.
- (4) If the Secretary of State receives such a request before the end of that period, he shall notify the court without delay of his decision whether to accede to the request.
- (5) If the Secretary of State notifies the court that he has decided to accede to the request—
- (a) the court shall, on receipt of the notification, terminate the period of remand, and

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- (b) the provisions of section 21 (request for transit) apply with the substitution for the reference in subsection (2)(c) to the time of arrival in the United Kingdom of a reference to the time of notification to the court.
- (6) If the Secretary of State notifies the court that he has decided not to accede to the request, the court shall, on receipt of the notification, discharge the arrested person.
- (7) In the applications of subsections (3) to (6) to proceedings in Scotland, any duty of the Secretary of State to notify the court shall be read as a duty to notify the Scottish Ministers who shall forthwith notify the court accordingly.

### *Supplementary provisions*

## **23 Provisions as to state or diplomatic immunity**

- (1) Any state or diplomatic immunity attaching to a person by reason of a connection with a state party to the ICC Statute does not prevent proceedings under this Part in relation to that person.
- (2) Where—
  - (a) state or diplomatic immunity attaches to a person by reason of a connection with a state other than a state party to the ICC Statute, and
  - (b) waiver of that immunity is obtained by the ICC in relation to a request for that person's surrender,the waiver shall be treated as extending to proceedings under this Part in connection with that request.
- (3) A certificate by the Secretary of State—
  - (a) that a state is or is not a party to the ICC Statute, or
  - (b) that there has been such a waiver as is mentioned in subsection (2),is conclusive evidence of that fact for the purposes of this Part.
- (4) The Secretary of State may in any particular case, after consultation with the ICC and the state concerned, direct that proceedings (or further proceedings) under this Part which, but for subsection (1) or (2), would be prevented by state or diplomatic immunity attaching to a person shall not be taken against that person.
- (5) The power conferred by section 1 of the United Nations Act 1946 (c. 45) (power to give effect by Order in Council to measures not involving the use of armed force) includes power to make in relation to any proceedings such provision corresponding to the provision made by this section in relation to the proceedings, but with the omission—
  - (a) in subsection (1), of the words “by reason of a connection with a state party to the ICC Statute”, and
  - (b) of subsections (2) and (3),as appears to Her Majesty to be necessary or expedient in consequence of such a referral as is mentioned in article 13(b) (referral by the United Nations Security Council).
- (6) In this section “state or diplomatic immunity” means any privilege or immunity attaching to a person, by reason of the status of that person or another as head of state, or as representative, official or agent of a state, under—

*Status: Point in time view as at 03/04/2006.*

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- (a) the Diplomatic Privileges Act 1964 (c. 81), the Consular Relations Act 1968 (c.18), the International Organisations Act 1968 (c.48) or the State Immunity Act 1978 (c.33),
- (b) any other legislative provision made for the purpose of implementing an international obligation, or
- (c) any rule of law derived from customary international law.

**Modifications etc. (not altering text)**

C1 S. 23(5) extended (IoM) (1.4.2004) by S.I. 2004/714, art. 2(a)

**24 Delivery up of persons subject to criminal proceedings, &c**

Schedule 2 makes provision for cases where the Secretary of State receives a request from the ICC for the arrest and surrender, or provisional arrest, of a person—

- (a) against whom criminal proceedings are pending or in progress before a national court, or who has been dealt with in such proceedings,
- (b) against whom extradition proceedings are pending or in progress in the United Kingdom, or in respect of whom a warrant or order has been made in such proceedings, or
- (c) against whom proceedings are pending or in progress in the United Kingdom for a delivery order under—
  - (i) the United Nations (International Tribunal) (Former Yugoslavia) Order 1996 (S.I. 1996/716) , or
  - (ii) the United Nations (International Tribunal) (Rwanda) Order 1996 (S.I. 1996/1296),
 or against whom a delivery order has been made in such proceedings.

**25 Documents having effect as warrants, &c**

(1) For the purposes of this Part the copy of a warrant issued by the ICC that is transmitted to the Secretary of State shall be treated as if it were the original warrant.

(2) Where facsimile transmission is used—

- (a) for the making of a request by the ICC or the transmission of any supporting documents, or
- (b) for the transmission of any document in consequence of such a request,

this Part applies as if the documents so sent were the originals of the documents so transmitted.

Any such document shall be receivable or, in Scotland, admissible in evidence accordingly.

(3) Where the ICC amends a warrant of arrest, the provisions of this Part apply to the amended warrant as if it were a new warrant.

This does not affect the validity of anything done in reliance on the old warrant.

**26 Meaning of “appropriate judicial officer” and “competent court”**

[(1)] For the purposes of this Part—

*Status: Point in time view as at 03/04/2006.*

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“appropriate judicial officer” means—

- (a) <sup>F3</sup> .....
- (b) a District Judge (Magistrates’ Courts) designated for the purposes of this Act [<sup>F4</sup>by the Lord Chief Justice of England and Wales after consulting the Lord Chancellor] , or
- (c) the Sheriff of Lothian and Borders; and

“competent court” means a court consisting of an appropriate judicial officer.

[<sup>F5</sup>(2) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]

#### **Textual Amendments**

- F3** S. 26(a) repealed (1.4.2005) by Courts Act 2003 (c. 39), s. 109(1)(3), Sch. 8 para. 403, **Sch. 10**; S.I. 2005/910, **art. 3**
- F4** Words in s. 26(1) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 15, **Sch. 4 para. 299(b)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(x)
- F5** S. 26(2) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 15, **Sch. 4 para. 299(c)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(x)

#### **Modifications etc. (not altering text)**

- C2** S. 26 renumbered (3.4.2006) as s. 26(1) by Constitutional Reform Act 2005 (c. 4), s. 15, **Sch. 4 para. 299(a)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(x)

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Point in time view as at 03/04/2006.

**Changes to legislation:**

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