2001 No. 2563

UNITED NATIONS

The United Nations (International Tribunal) (Former Yugoslavia) (Amendment) Order 2001

Made - - - - - - - -	*18th July 2001*
Laid before Parliament - - -	*19th July 2001*
Laid before the Scottish Parliament	*19th July 2001*
Coming into force - - - - -	*1st September 2001*

At the Court at Buckingham Palace, the 18th day of July 2001

Present,

The Queen's Most Excellent Majesty in Council

Whereas under article 41 of the Charter of the United Nations the Security Council of the United Nations, by a resolution adopted on 25th May 1993, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to a decision of that Council in relation to the Former Yugoslavia:

And whereas, under section 1 of the United Nations Act 1946(**a**) ("the 1946 Act") Her Majesty may, by Order in Council, make such provision as appears to her necessary or expedient for enabling those measures to be effectively applied:

And whereas, on 13th March 1996, Her Majesty made the United Nations (International Tribunal) (Former Yugoslavia) Order 1996(**b**) ("the 1996 Order"), which was laid before Parliament on 14th March 1996 and came into force on 15th March 1996:

And whereas, under section 1(3) of the 1946 Act, any Order in Council made under section 1 of the 1946 Act may be varied or revoked by a subsequent Order in Council:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 1 of the 1946 Act, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, commencement and extent

1.—(1) This Order may be cited as the United Nations (International Tribunal) (Former Yugoslavia) (Amendment) Order 2001 and shall come into force on 1st September 2001.

(2) This Order extends to the United Kingdom.

(**a**) 1946 c. 45; section 1(4) was amended by paragraph 6 of Schedule 8 to the Scotland Act 1998 (c. 48).
(**b**) S.I. 1996/716; as amended by the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Amendment) Order 2001 (S.I. 2001/412).

Production or Access Orders

2. After article 17 of the 1996 Order insert—

"**Production or Access Orders**

17A.—(1) Where the Secretary of State receives a request from the International Tribunal for assistance—

(a) in ascertaining whether a person has benefited from an International Tribunal crime, or

(b) in identifying the extent or whereabouts of property derived directly or indirectly from an International Tribunal crime,

the Secretary of State may direct a constable to apply for an order under this article.

(2) An order under this article may be made by a Circuit Judge or, in Northern Ireland, a County Court Judge on an application made in pursuance of a direction by the Secretary of State under paragraph (1).

(3) Any such application—

(i) in England and Wales, may be made without notice and may be granted without a hearing; and

(ii) in Northern Ireland, may be made on an ex parte application to a judge in chambers.

(4) The judge may make an order under this article if he is satisfied that there are reasonable grounds for suspecting—

(a) that a specified person has benefited from an International Tribunal crime, and

(b) that the material to which the application relates is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made.

(5) No such order shall be made if it appears to the judge that the material to which the application relates consists of or includes items subject to legal privilege.

(6) The judge may order a specified person who appears to have in his possession, custody or power specified material, or material of a specified description, to which the application relates, either—

(a) to produce the material to a constable within a specified period for the constable to take away (a "production order"), or

(b) to give a constable access to the material within a specified period (an "access order").

(7) The specified period shall be seven days beginning with the date of the order unless it appears to the judge making the order that a longer or shorter period would be appropriate in the particular circumstances of the application.

(8) Where the judge makes an access order in relation to material on any premises he may, on the application of a constable, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

(9) In this article "specified" means specified in the order.

(10) Where a production or access order is made by virtue of article 17B (material not yet in possession or existence), the provisions of this article have effect subject to the modifications specified in that article.

(11) In the application of this article to Scotland the following modifications shall have effect—

(a) for paragraph (1) there shall be substituted:

"(1) Where the Secretary of State receives a request from the International Tribunal for assistance—

(a) in ascertaining whether a person has benefited from an International Tribunal crime, or

(b) in identifying the extent or whereabouts of property derived directly or indirectly from an International Tribunal crime,

the Secretary of State shall pass a copy of the request to the Scottish Ministeres who may direct such person as they may authorise to apply for an order under this article, and any such person is referred to as "the authorised person.";

(b) for paragraphs (2) and (3) there shall be substituted:

"(2) An order under this article may be made on an ex parte application by the authorised person to a Sheriff in chambers.";

(c) for any reference to "the judge", there shall be substituted a reference to the "sheriff"; and

(d) in paragraph (5), the expression "items subject to legal privilege" has the meaning given to that expression by section 33 of the Criminal Law (Consolidation) (Scotland) Act 1995(**a**).

Material not yet in possession or existence

17B.—(1) A production or access order may be made in relation to a person who the judge thinks is likely to have material to which the application relates in his possession, custody or power within the period of 28 days beginning with the date of the order.

(2) A production or access order may also be made in relation to material consisting of or including material which is expected to come into existence within that period. In that case it must specify a person within paragraph (1).

(3) Where a production or access order is made by virtue of this article—

(a) the order shall require the specified person to notify a named constable as soon as is reasonably practicable after any material to which the application relates comes into his possession, custody or power, and

(b) article 17A has effect with the following modifications.

(4) The modifications are—

(a) that the references in article 17A(6) to material which the specified person has in his possession, custody or powers shall be read as references to the material that comes into his possession, custody or power, and

(b) that the reference in paragraph 17A (7) to the date of the order shall be read as reference to the date of the notification required by paragraph (3)(a) above.

(5) In this article "specified" means specified in the order.

(6) In the application of this article to Scotland for the reference to "the judge" in paragraph (1) there shall be substituted a reference to "the sheriff".

Effect of order

17C.—(1) A production or access order has effect as if it were an order of the Crown Court and may be varied or discharged accordingly.

(2) In the application of this article to Scotland for paragraph (1) there shall be substituted—

"(1) The sheriff shall have power to vary or discharge a production or access order.".

Effect of order: supplementary

17D.—(1) Where the material to which a production or access order relates consists of information contained in a computer—

(a) a production order has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and

(b) an access order has effect as an order to give access to the material in a form in which it is visible and legible.

(2) A production or access order does not confer any right to production of, or access to, items subject to legal privilege.

(**a**) 1995 c. 39.

(3) Subject to paragragh (2), the order has effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(4) For the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984(**a**) or, in Northern Ireland, Articles 23 and 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989(**b**) (access to, and copying and retention of, seized material) material produced in pursuance of a production or access order shall be treated as if it were material sezied by a constable.

(5) In the application of this paragraph to Scotland the following modifications have effect—

(a) paragraph (4) shall be omitted, and

(b) in paragraph (2) "items subject to legal privilege" has the meaning given to that expression by section 33 of the Criminal Law (Consolidation) (Scotland) Act 1995.

Order in relation to material in possession of government department

17E.—(1) A production or access order may be made in relation to material in the possession, custody or power of a government department.

(2) An order so made—

(a) shall be served as if the proceedings were civil proceedings against the department, and

(b) may require any officer of the department, whether named in the order or not, who may for the time being have in his possession, custody or power the material concerned, to comply with it.

(3) In this article "government department" means—

(a) an authorised government department for the purposes of the Crown Proceedings Act 1947(**c**);

(b) an authorised Northern Ireland department for the purposes of that Act as it applies to the Crown in right of Her Majesty's Government in Northern Ireland, or

(c) a public department within the meaning of the Crown Suits (Scotland) Act 1857(**d**) and any part of the Scottish Administration.".

Enforcement of orders for the preservation or restitution of property

3. Article 20 of the 1996 Order is amended as follows—

(a) for paragraphs (1) and (2) substitute—

"(1) This article applies 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.

(2) The Secretary of State shall—

(a) appoint a person to act on behalf of the Tribunal for the purposes of enforcing the order, and

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(**a**) 1984 c. 60.
(**b**) S.I. 1989/1341 (N.I. 12).
(**c**) 1947 c. 44.
(**d**) 1857 c. 44.

(b) give such directions to the appointed person as appear to him necessary.

(2A) If the Secretary of State so directs, the person appointed under paragraph (2) shall apply to a court for registration of the order for enforcement.

(2B) On the application of the appointed person the court shall register the order as a precondition of enforcement.

(2C) An order shall not be so registered unless the court is satisfied that the order is in force and not subject to appeal.

(2D) If the order has been partly complied with, the court shall register the order for enforcement only so far as it has not been complied with.

(2E) The registration of the order under this article shall be cancelled if the order is satisfied by other means.

(2F) A court may on the application of the appointed person vest in that person any property to which the order relates, to be disposed of in accordance with the directions of the Secretary of State.

(2G) That person shall transmit the proceeds to the Secretary of State, who shall transmit the proceeds to the International Tribunal.

(2H) The court shall not exercise its powers of enforcment or disposal in relation to any property unless it is satisfied—

(a) that a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court, and

(b) that the exercise of the powers will not prejudice the rights of bona fide third parties.";

(b) in paragraph (5), after the word "registration" in the first place where it occurs, insert the words "and enforcement", and

(c) after paragraph (6) insert—

"(7) In the application of this article to Scotland for any reference to "the Secretary of State" there shall be substituted a reference to "the Scottish Ministers".".

4. Article 27 of the 1996 Order is amended as follows—

(a) in paragraph (1) omit the words in brackets, and

(b) after paragraph (1) insert—

"(1A) Where facsimile transmission is used—

(a) for the making of a request by the International Tribunal or the transmission of any supporting documents, or

(b) for the transmission of any document in consequence of such a request,

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

(1B) A document which falls within paragraph (1) or (2) shall be receivable or, in Scotland, admissible in evidence accordingly.".

A. K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the United Nations (International Tribunal) (Former Yugoslavia) Order 1996 so as to provide that an application to a court for the registration of a Tribunal freezing or restitution order is to be made by a person appointed by the Secretary of State or authorised by the Scottish Ministers, to provide for orders for production of, or access to, evidence to be made at the request of the Tribunal, and to provide for the transmission of documents to be made by facsimile.

STATUTORY INSTRUMENTS

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The United Nations (International Tribunal) (Former Yugoslavia) (Amendment) Order 2001

ISBN 0-11-029746-6

9 780110 297460

£2.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1368 7/2001 643814 19585