

Extradition Arrest Warrant Act 2004

This version is out of date

Principal Act

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	<i>Assent</i>	28.1.2004

Amending enactments	Relevant current provisions	Commencement date
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2017/102	s. 6(b)	25.5.2017
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Transposing:

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2004-04

Extradition Arrest Warrant

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Framework Decision 2009/299/JHA

Framework Decision 2002/584/JHA

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PART 1

PRELIMINARY AND GENERAL

Title.

1. This Act may be cited as the Extradition Arrest Warrant Act 2004.

Interpretation.

2. In this Act, except where the context otherwise requires—

“Central Authority in Gibraltar” shall be construed in accordance with section 5;

“Extradition arrest warrant” means, subject to section 23, a warrant, order or decision of a judicial authority of a State, issued under such laws as give effect to arrangements for expedited extradition between that State and Gibraltar, for the arrest and surrender by Gibraltar to that State of a person in respect of an offence committed or alleged to have been committed by him under the law of that State;

“facsimile copy” means, in relation to a document, a facsimile copy of that document transmitted in accordance with section 8;

“functions” includes powers and duties, and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the performance of the duties;

“International Criminal Court” shall be interpreted in accordance with the Rome Statute of the International Criminal Court, done in Rome on 17 July 1998;

“issuing judicial authority” means, in relation to an Extradition arrest warrant, the judicial authority in the issuing State that issued the Extradition arrest warrant concerned;

“issuing State” means, in relation to an Extradition arrest warrant, a State (a judicial authority of which has issued an Extradition arrest warrant);

“judicial authority” means the judge, magistrate or other person authorised under the law of the State concerned to perform functions the same as or similar to those performed under section 24 by a court in Gibraltar;

“State” means–

- (a) a State designated by Order for the purposes of this Act by the Government; or”
- (b) the United Kingdom;

“third country” means a country other than a State;

“true copy” shall be construed in accordance with section 8(7).

Application.

3.(1) This Act shall apply in relation to an offence, whether committed or alleged to have been committed before or after the commencement of this Act.

(2) *Deleted.*

Relation of foreign offences to offences under Gibraltar law.

4. For the purposes of this Act–

- (a) an offence under the law of the issuing State corresponds to an offence under the law of Gibraltar, where the act or omission that constitutes the offence under the law of the issuing State would, if committed in Gibraltar, constitute an offence under the law of Gibraltar; and
- (b) an offence under the law of Gibraltar corresponds to an offence under the law of the issuing State, where the act or omission that constitutes the offence under the law of Gibraltar would, if committed in the issuing State, constitute an offence under the law of the issuing State.

Central authority.

5.(1) The Central Authority for the purposes of this Act shall be the Governor.

(2) The Governor shall delegate to the Chief Secretary his powers under subsection (1) in relation to matters not affecting internal security or defence.

Urgency.

5A. An Extradition arrest warrant must be dealt with and executed as a matter of urgency.

PART 2

EXTRADITION ARREST WARRANT**CHAPTER 1****Extradition arrest warrant Received in Gibraltar.**

6. Where a judicial authority in an issuing State duly issues an Extradition arrest warrant in respect of a person—

- (a) against whom that State intends to bring proceedings for the offence to which the Extradition arrest warrant relates; or
- (b) on whom a sentence of imprisonment or detention has been imposed in that State,

that person shall, subject to and in accordance with the provisions of this Act be arrested and surrendered to the issuing State.

Form of Warrant.

7.(1) An Extradition arrest warrant shall, in so far as is practicable, be in the form set out in Schedule 1 and shall specify—

- (a) the identity and the nationality of the person in respect of whom it is issued;
- (b) the name, address, telephone number, fax number and e-mail address of the judicial authority that issued the Extradition arrest warrant;
- (c) the offence to which the Extradition arrest warrant relates including the nature and classification under the law of the issuing State of the offence concerned;
- (d) evidence of a conviction, sentence or detention order is immediately enforceable against the person, or that a warrant for his arrest or other order of a judicial authority in the issuing State having the same effect has been issued in respect of that offence;
- (e) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence;
- (f)

- (i) the penalties to which that person would, if convicted of the offence specified in the Extradition arrest warrant, be liable;
 - (ii) where that person has been convicted of the offence specified in the Extradition arrest warrant but has not yet been sentenced, the penalties to which he is liable in respect of the offence; or
 - (iii) where that person has been convicted of the offence specified in the Extradition arrest warrant and a sentence has been imposed in respect thereof, the penalties of which that sentence consists; and
- (g) if possible, other consequences of the offence.

(2) Where it is not practicable for the Extradition arrest warrant to be in the form referred to in subsection (1), it shall include such information, additional to the information specified in subsection (1), as would be required to be provided were it in that form.

(3) Where an Extradition arrest warrant is issued in the issuing state in respect of a person who has not been convicted of the offence specified therein, the Extradition arrest warrant shall include or be accompanied by a statement in writing, from the judicial authority or any authority competent to issue such a statement in the issuing State, that the arrest and surrender of the person concerned is sought only for the purpose of conducting a criminal prosecution against him in respect of the offence specified therein or an offence disclosed by the same facts as the offence specified therein.

Transmission of warrants.

8.(1) An Extradition arrest warrant shall be transmitted by, or on behalf of, the issuing judicial authority to the Central Authority in Gibraltar and, where the Extradition arrest warrant is in a language other than the English language, a translation of the Extradition arrest warrant into English shall be so transmitted with the Extradition arrest warrant.

(2) Such undertakings as are required to be given under this Act shall be transmitted by, or on behalf of, the issuing judicial authority to the Central Authority in Gibraltar, and where any such undertaking is in a language other than the English language, a translation of that undertaking into English shall be so transmitted with the undertaking.

(3) An Extradition arrest warrant, or an undertaking required to be given under this Act, may be transmitted to the Central Authority in Gibraltar by delivering it to the Central Authority in Gibraltar or if the location of the requested person is known, by delivering it directly to the magistrates' court.

(4) Notwithstanding subsection (3), an issuing judicial authority shall be deemed to have complied with subsection (1) if copies of—

- (a) the Extradition arrest warrant; and
- (b) where appropriate, a translation thereof,

are transmitted by the issuing judicial authority to the Central Authority in Gibraltar by means of a facsimile machine or any other secure means capable of producing written records under conditions allowing for the Central Authority in Gibraltar or to the magistrates' court to establish its authenticity.

(5) Notwithstanding subsection (3), an issuing judicial authority shall be deemed to have complied with subsection (2) if copies of–

- (a) such undertakings as are required under this Act; and
- (b) where appropriate, translations thereof,

are transmitted, by the issuing judicial authority to the Central Authority in Gibraltar by means of a facsimile machine or any other secure means capable of producing written records under conditions allowing for the Central Authority in Gibraltar or to the magistrates' court to establish its authenticity.

(6) If the Central Authority in Gibraltar or the magistrates court is not satisfied that the copy of a document transmitted in accordance with this section corresponds to the document of which it purports to be a copy, he, or it, shall require the issuing judicial authority to cause the original of the document or a true copy thereof to be transmitted to the Central Authority in Gibraltar, and shall agree with the issuing judicial authority the manner in which such original or true copy shall be transmitted.

(7) For the purposes of this Act, a document shall be deemed to be a true copy of an original document if it has been certified as a true copy of the original document by–

- (a) the issuing judicial authority; or
- (b) an officer of the central authority of the issuing State duly authorised to certify it as a true copy,

and where the seal of the issuing judicial authority or the central authority of the issuing State has been affixed to the document, judicial notice shall be taken of that seal.

(8) In proceedings to which this Act applies, a document transmitted in accordance with this section that purports to be–

- (a) an Extradition arrest warrant issued by a judicial authority in the issuing State;

- (b) an undertaking required under this Act of a judicial authority in the issuing State;
- (c) a translation of an Extradition arrest warrant or undertaking under this Act; or
- (d) a true copy of such a document,

shall be received in evidence without further proof.

(9) In proceedings to which this Act applies, a document that purports to be a copy or true copy of an Extradition arrest warrant, undertaking or translation referred to in subsection (8) shall, unless the contrary is shown, be evidence of the Extradition arrest warrant, undertaking or translation concerned, as the case may be.

(10) If an Extradition arrest warrant or a document purporting to be an Extradition arrest warrant is received by an authority which is not competent to act upon it, the authority must automatically forward the Extradition arrest warrant or the document purporting to be an Extradition arrest warrant to the Central Authority in Gibraltar and inform the issuing judicial authority accordingly.

(11) In this section “undertaking” includes a statement under section 7(3).

Guarantees from the issuing State prior to execution.

8A.(1) The execution of an Extradition arrest warrant transmitted in accordance with section 8 is subject to the conditions in subsections (2) and (3).

(2) Where the offence in the Extradition arrest warrant is punishable by a custodial life sentence or life-time detention order, the issuing State must have provisions in its legal system for-

- (a) a review of the penalty or measure imposed, either on request or within 20 years of the imposition of the penalty or measure; or
- (b) an application of measures of clemency which the person is entitled to apply for under the law or practice of the issuing State,

aiming at non-execution of the penalty or measure.

(3) Where the person named in the Extradition arrest warrant is a Gibraltarian (as defined in section 4 of the Gibraltarian Status Act) or resident and he is to be surrendered to the issuing State, he must, after being heard, be returned to Gibraltar in order to serve a custodial sentence or detention order passed against him in the issuing State.

Applications by the Central Authority.

9.(1) Subject to section 8A, the Central Authority in Gibraltar shall, as soon as may be after it receives an Extradition arrest warrant transmitted to it in accordance with section 8, take the necessary steps to ensure its execution.

(2) Upon being transmitted in accordance with section 8, an Extradition arrest warrant may be executed by any police officer in any part of Gibraltar notwithstanding that it is not in the possession of the police officer at the time of execution.

(2A) A copy of the Extradition arrest warrant transmitted in accordance with section 8 must be given to the person arrested not later than 24 hours after his arrest.

(3) Without prejudice to any other statutory provision or rule of law relating to the rights of an arrested person, a person arrested under an Extradition arrest warrant shall, upon his arrest, be informed of his right to—

- (a) consent to his being surrendered to the issuing State under section 11;
- (b) obtain, or be provided with, professional legal advice; and
- (c) obtain, or be provided with, where appropriate, the services of an interpreter.

Provisional arrest.

9A.(1) A police officer may arrest a person without a warrant if he has reasonable grounds for believing that an Extradition arrest warrant has been or will be issued in respect of that person.

(2) Where a person is arrested under this section—

- (a) an Extradition arrest warrant in compliance with section 7 and Schedule 1 to this Act must be transmitted to the Central Authority by the issuing state within 48 hours of the arrest; and
- (b) such person shall, together with a copy of the warrant, transmitted in accordance with section 8, as soon as may be practicable after transmission of the Extradition arrest warrant, be brought before the magistrates' court, which shall, if satisfied that that person is the person in respect of whom the Extradition arrest warrant was issued, proceed as if the person were brought before the court under section 10.

(3) If subsection (2) is not complied with and the person applies to the magistrates' court to be discharged, the court must order his discharge.

(4) Subsection (5) applies if—

- (a) a person is arrested under this section on the basis of a belief that an Extradition arrest warrant has been or will be issued in respect of him; and
 - (b) the person is discharged under subsection (3).
- (5) The person must not be arrested again under this section on the basis of a belief relating to the same warrant.

Letter of Rights.

9B.(1) The Central Authority in Gibraltar must ensure that if a person who has been arrested for the purpose of the execution of an Extradition Arrest Warrant is provided promptly with an appropriate Letter of Rights containing information on his rights under this Act.

- (2) The Letter of Rights referred to in subsection (1) must be drafted—
- (a) in simple and plain language; and
 - (b) following the model Letter of Rights set out in Schedule 3.

Arrested person to be brought before court.

10. A person arrested under an Extradition arrest warrant shall, subject to section 9A(2), together with a copy of the warrant, transmitted in accordance with section 8, as soon as may be practicable after his arrest, be brought before the magistrates' court, which shall, if satisfied that that person is the person in respect of whom the Extradition arrest warrant was issued—

- (a) remand the person in custody or on bail (and, for that purpose, the court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence);
- (b) fix a date for the purpose of section 12; and
- (c) inform the person of the Extradition arrest warrant and of its contents and of his right to—
 - (i) consent to his surrender to the issuing State under section 11;
 - (ii) obtain, or be provided with, professional legal advice; and
 - (iii) obtain, or be provided with, where appropriate, the services of an interpreter.

Consent to be surrendered.

11.(1) Where a person is brought before the magistrates' court under section 10, he may consent to his being surrendered to the issuing State and, where he does so consent, the court shall, if it is satisfied that—

- (a) the Extradition arrest warrant, transmitted in accordance with section 8 has been executed in accordance with the provisions of this Act;
- (b) the surrender of the person is not prohibited by Part 3;
- (c) the person voluntarily consents to his being surrendered to the issuing State concerned and is aware of the consequences of his so consenting; and
- (d) the person has obtained, or been given the opportunity of obtaining or being provided with, professional legal advice before consenting to his surrender,

make an order directing that the person be surrendered to such other person as is duly authorised by the issuing State to receive him.

(2) *Deleted*

(2A) Where a person is brought before the magistrates' court under section 10, he may consent, if appropriate, at the same time as giving consent for his surrender under subsection (1), renounce his entitlement to the 'speciality rule'.

(2B) Where a person renounces his entitlement to the 'speciality rule' under subsection (2A), the magistrates' court must, if it is satisfied that—

- (a) the Extradition arrest warrant transmitted in accordance with section 8 has been executed in accordance with the provisions of this Act;
- (b) the surrender of the person is not prohibited by Part 3;
- (c) the person voluntarily renounces his entitlement to the 'speciality rule' and is aware of the consequences of his renunciation; and
- (d) the person has obtained, or been given the opportunity of obtaining or being provided with, professional legal advice before renouncing his entitlement to the 'speciality rule',

make an order in addition to, or included in, the order made under subsection (1) directing that the person has renounced his entitlement to the 'speciality rule' referred to in section 15.

(3) Where the magistrates' court makes an order under this section, it shall–

- (a) record in writing that the person concerned has consented to his being surrendered to the issuing State concerned;
- (aa) if appropriate, record in writing that the person concerned renounced his entitlement to the 'speciality rule' and;
- (b) commit the person to a prison (provided that, if the person is not more than 21 years of age, he shall be held on remand terms) pending the carrying out of the terms of the order.

(3A) The order made by the magistrates' court under subsection (1) should be made within 10 days of the giving of consent by the person brought under section 10.

(3B) Where the time limit in subsection (3A) cannot be met the magistrates' court–

- (a) must immediately inform the issuing judicial authority giving reasons for the delay; and
- (b) may extend the time limits by a further 30 days.

(3C) Where a court decides not to make an order under this section–

- (a) it must give reasons for its decision; and
- (b) the person must, subject to subsection (3D), be released from custody.

(3D) Subsection 3C must not apply if–

- (a)
 - (i) the person has been sentenced to a term of imprisonment for an offence of which he was convicted in Gibraltar;
 - (ii) on the date on which he would, but for this subsection, be entitled to be released under subsection (3C), all or part of the term of imprisonment remains unexpired; and
 - (iii) the person is required to serve all or part of the remainder of that term of imprisonment; or
- (b)

- (i) the person has been charged with or convicted of an offence in Gibraltar; and
- (ii) on the date on which he would, but for this paragraph, be entitled to be released from custody under subsection (3C), he is required to be in custody by virtue of having been remanded in custody pending his being tried, or the imposition of sentence, in respect of that offence.

Revocation of consent or renunciation.

11A.(1) Consent and, if appropriate, renunciation of the ‘speciality rule’ may be revoked by the person named in an Extradition arrest warrant before a magistrates’ court.

- (2) Subsection (1) applies if the court must—
 - (a) record in writing that the person concerned has revoked his consent to his being surrendered to the issuing State concerned or his renunciation of his entitlement to the ‘speciality rule’;
 - (b) and make such order as it deems necessary for the surrender of the person to the issuing State including an order to commit the person to a prison (provided that, if the person is not more than 21 years of age, he shall be held on remand terms) pending the carrying out of the terms of the order.

(3) Where consent is revoked or if appropriate the renunciation of the ‘speciality rule’ is revoked by the person named in the Extradition arrest warrant, the period of time between the date of consent and the date of revocation shall not be taken into account in establishing the time limits laid down in sections 11(3A), 11(3B), 12(3A) and 12(3B).

Time limits for surrender of the person.

11B.(1) A person to whom an order for the time being in force under section 11 applies must be surrendered to the issuing State concerned—

- (a) as soon as possible on a date agreed between the authorities concerned; and
 - (b) no later than 10 days after the order made under section 11(1).
- (2) If a person to whom an order for the time being in force under section 11 applies is not surrendered in accordance with subsection (1), due to circumstances beyond the control of the requesting and the executing authorities, the magistrates’ court must—
- (a) immediately contact the issuing judicial authority and agree on a new surrender date, and

(b) surrender the person within 10 days of the date agreed under paragraph (a).

(3) The surrender of a person to whom an order for the time being in force under section 11 applies may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that surrender at that time would manifestly endanger the person's life or health.

(4) The surrender of a person which has been postponed under subsection (3) must be executed as soon as the grounds postponing the surrender have ceased to exist, and the magistrates' court must-

(a) immediately inform the issuing judicial authority and agree on a new surrender date, and

(b) surrender the person within 10 days of the date agreed under paragraph (a).

(5) If a person to whom an order for the time being in force under section 11 applies is not surrendered to the issuing State in accordance with subsections (1), (2), (3) and (4) he must, subject to subsection (6), be released from custody immediately upon the expiration of the days referred to in subsections (1),(2), (3) and (4).

(6) Subsection (5) does not apply if-

(a)

- (i) the person has been sentenced to a term of imprisonment or an offence of which he was convicted in Gibraltar;
- (ii) on the date on which he would, but for this subsection, be entitled to be released from custody under subsection (5), all or part of that term of imprisonment remains unexpired; and
- (iii) the person is required to serve all or part of the remainder of that term of imprisonment; or

(b)

- (i) the person has been charged with or convicted of an offence in Gibraltar; and
- (ii) on the date on which he would, but for this paragraph, be entitled to be released from custody under subsection (5) he is required to be in custody by virtue of having been remanded in custody pending his being tried, or the imposition of a sentence, in respect of that offence.

Refusal to consent to be surrendered.

12.(1) Where a person does not consent to his surrender to the issuing State the magistrates' court may, after hearing that person, make an order directing that the person be surrendered to such other person as is duly authorised by the issuing State to receive him.

(2) Subsection (1) shall apply subject to the following provisions, that is to say that—

- (a) the Extradition arrest warrant, transmitted in accordance with section 8 and, where appropriate, such undertakings or statements as are required under this Act are provided to the court;
- (b) the magistrates' court is satisfied that the person before it is the person in respect of whom the Extradition arrest warrant was issued;
- (c) the surrender of the person is not prohibited by Part 3; and
- (d) the Extradition arrest warrant transmitted in accordance with section 8 has been executed in accordance with the provisions of this Act.

(3) When making an order under this section the magistrates' court shall also make an order committing the person to a prison (provided that, if he is not more than 21 years of age, he shall be held on remand terms) there to remain pending his surrender in accordance with the order under this section, and shall inform the person—

- (a) that he will not, without his consent, be surrendered to the issuing State, before the expiration of the period of 7 days specified in section 38(4); and
- (b) of his right to appeal to the Supreme Court on a point of fact or law at any time before his surrender to the issuing State in accordance with Part 4.

(3A) In fixing a date under section 10 the court shall have regard to the requirement that an order under subsection (1) should be made within a period of 60 days after the arrest of the requested person.

(3B) Where the order referred to in subsection (3A) cannot be made within the period referred to therein the magistrates' court—

- (a) must immediately inform the issuing judicial authority giving reasons for the delay; and
- (b) may extend the time limit by a further 30 days.

(4) Where the court decides not to make an order under this section–

- (a) it shall give reasons for its decision; and
- (b) the person shall, subject to subsection (5), be released from custody.

(5) Subsection (4) shall not apply if–

- (a)
 - (i) the person has been sentenced to a term of imprisonment for an offence of which he was convicted in Gibraltar;
 - (ii) on the date on which he would, but for this subsection, be entitled to be released under subsection (4), all or part of the term of imprisonment remains unexpired; and
 - (iii) the person is required to serve all or part of the remainder of that term of imprisonment; or
- (b)
 - (i) the person has been charged with or convicted of an offence in Gibraltar; and
 - (ii) on the date on which he would, but for this paragraph, be entitled to be released from custody under subsection (4), he is required to be in custody by virtue of having been remanded in custody pending his being tried, or the imposition of sentence, in respect of that offence.

12A. *Deleted.*

Material conditions for surrender to remain fulfilled.

12B. Where the magistrates' court has not taken a final decision on the surrender of a person under an Extradition arrest warrant transmitted in accordance with section 8, the magistrates' court must ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

Request for additional information by the magistrates' court.

13. In proceedings to which this Act applies the magistrates' court may, if of the opinion that the documentation or information provided by the issuing State is not sufficient to enable it to decide on surrender of the requested person, require the issuing State to provide it with such

additional documentation or information as necessary, as a matter of urgency and within such period as it may specify taking account of the time limits in sections 11(3A), 12(3A), 11(3B) and 12(3B).

Additional useful information - received.

13A. The magistrates' court may at any time make use of additional information received from the issuing State relating to a previous request pursuant to an Extradition arrest warrant transmitted in accordance with section 8.

Situation pending the decision.

14A.(1) Where an Extradition arrest warrant transmitted in accordance with section 8 was issued in order to conduct a criminal prosecution, the magistrates' court must either—

- (a) agree to the requested person be heard in accordance with section 14B, or
- (b) agree to the temporary transfer of the requested person.

(2) Where a temporary transfer under subsection (1)(b) is decided upon by the magistrates' court, both the magistrates' court and the issuing judicial authority must by mutual agreement decide the conditions and the duration of the temporary transfer of the person requested in the Extradition arrest warrant.

(3) In deciding the conditions and duration of the temporary transfer referred to in subsection (2), the requested person must be able to return to Gibraltar in order to attend hearings concerning him as part of the surrender procedure.

Hearing the person pending the decision.

14B.(1) A hearing for the purposes of section 14A shall be before a magistrates' court.

(2) In conducting the hearing referred to in subsection (1) the magistrates' court may be assisted by a person designated in accordance with the law of the requesting court.

(3) Gibraltar law shall govern a hearing for the purpose of section 14A and be subject to any conditions mutually agreed between the magistrates' court and the issuing judicial authority.

(4) In order to ensure the proper application of this section the Chief Justice may assign another judicial authority to take part in the hearing of the requested person.

Conditions for surrender.

15.(1) Subject to this section, a person shall not be surrendered under this Act unless–

- (a) under the law of the issuing State a person who is surrendered to it pursuant to an Extradition arrest warrant shall not be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his personal freedom, for an offence committed before his surrender other than the offence specified in the Extradition arrest warrant or an offence disclosed by the same facts as the offence specified in that warrant; or
- (b) an undertaking in writing is given to the magistrates' court by the issuing judicial authority or any authority competent to issue such an undertaking in the issuing State that the person will not be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his personal freedom, for an offence committed before his surrender other than the offence specified in the Extradition arrest warrant concerned or an offence disclosed by the same facts as the offence specified in that warrant.

(1A) It shall be presumed that the law of the issuing State is such as to allow the surrender of the person by virtue of subsection (1)(a) unless it is demonstrated otherwise on the balance of probabilities.

(2) The surrender of a person under this Act shall not be refused on the ground that it is intended to proceed against him in the issuing State for an offence (other than the offence specified in the Extradition arrest warrant) alleged to have been committed by him before his surrender provided that–

- (a) upon conviction he is not liable to a term of imprisonment or detention; or
- (b) in circumstances where upon conviction he is liable to a term of imprisonment or detention and such other penalty as does not involve a restriction of his personal liberty, the magistrates' court is satisfied that the said other penalty only will be imposed should he be convicted of the offence concerned.

(3) The surrender of a person under this Act shall not be refused on the ground that it is intended to impose in the issuing State a penalty (other than a penalty consisting of the restriction of the person's liberty) including a financial penalty in respect of an offence–

- (a) of which the person claimed has been convicted;
- (b) that was committed before his surrender; and
- (c) that is not the offence specified in the Extradition arrest warrant,

notwithstanding that where such person fails or refuses to pay the penalty concerned (or, in the case of a penalty that is not a financial penalty, fails or refuses to submit to any measure or comply with any requirements of which the penalty consists) he may, under the law of the issuing State be detained or otherwise deprived of his personal liberty.

(4) The surrender of a person under this Act shall not be refused on the ground that it is intended to proceed against or detain him in the issuing State for the purpose of executing a sentence or order of detention in respect of an offence—

- (a) of which the person claimed has been convicted;
 - (b) that was committed before his surrender; and
 - (c) that is not the offence specified in the Extradition arrest warrant concerned or an offence disclosed by the same facts as the offence specified in that warrant, or otherwise restrict his personal liberty as a consequence of being convicted of such offence provided that—
 - (i) after his surrender he consents to such execution or to his personal liberty being so restricted (he renounces the speciality rule); and
 - (ii) under the law of the issuing State such consent shall be given before the competent judicial authority in the issuing State and be recorded in accordance with the law of the issuing State.
- (5)
- (a) The surrender of a person under this Act shall not be refused on the ground that it is intended—
 - (i) to proceed against him in the issuing State for an offence committed or alleged to have been committed by the person before his surrender;
 - (ii) to impose in the issuing State a penalty (including a penalty consisting of a restriction of the person's liberty), in respect of an offence of which he was convicted before his surrender; or
 - (iii) to proceed against or detain him in the issuing State for the purpose of executing a sentence or order of detention in respect of an offence of which the person was convicted before his surrender,

provided that, upon the receipt of a request in writing from the issuing judicial authority, or any authority competent to make such a request in the issuing State,

in that behalf by the Central Authority, the Central Authority consents to the person's surrender.

- (b) In this subsection "offence" means an offence—
 - (i) other than—
 - (a) the offence specified in the Extradition arrest warrant concerned or an offence disclosed by the same facts as the offence specified in that warrant; or
 - (b) an offence in respect of which a person could not, by virtue of Part 3 be surrendered under this Act; and
 - (ii) that is an offence under the law of the issuing State—
 - (a) on the day of its commission or alleged commission; or
 - (b) on the day on which the Extradition arrest warrant is issued.
- (6) A person shall be surrendered under this Act notwithstanding that it is intended—
 - (a) to proceed against him in the issuing State for an offence committed or alleged to have been committed by him before his surrender;
 - (b) to impose in the issuing State a penalty (including a penalty consisting of a restriction of the person's liberty) in respect of an offence of which he was convicted before his surrender; or
 - (c) to proceed against or detain him in the issuing State for the purpose of executing a sentence or order of detention in respect of an offence of which the person was convicted before his surrender,

where the offence concerned is not the offence specified in the Extradition arrest warrant or an offence disclosed by the same facts as the offence specified in that warrant, provided that—

- (i) an undertaking in writing will be given by or on behalf of the issuing judicial authority or any authority competent to issue such an undertaking in the issuing State to the magistrates' court, that the person will not be so proceeded against and no such penalty will be imposed before the expiration of a period of 45 days from the date of the person's final discharge in respect of the offence for which he is surrendered during which he shall be free to leave the issuing State, or unless having been so discharged he leaves the issuing State and later returns thereto;

- (ii) the magistrates' court is satisfied that—
 - (a) the person consents to being surrendered under section 11;
 - (b) at the time of so consenting he consented to being so proceeded against or to such a penalty being imposed and was aware of the consequences of his so doing; and
 - (c) the person obtained or was given the opportunity to obtain professional legal advice in relation to the matters to which this subparagraph applies before so consenting; or
- (iii) an undertaking in writing will be given by or on behalf of the issuing judicial authority or any authority competent to issue such an undertaking in the issuing State to the magistrates' court that the person will not be so proceeded against or detained, and no such penalty will be imposed, unless—
 - (a) the person voluntarily gives his consent to being so proceeded against or detained, or to such a penalty being imposed, and is fully aware of the consequences of so doing;
 - (b) that consent is given before the competent judicial authority in the issuing State; and
 - (c) the person obtains or is given the opportunity to obtain professional legal advice in the issuing State in relation to the matters to which this subparagraph applies before so consenting.

Incoming request for consent for prosecution.

15A.(1) An issuing judicial authority may request the magistrates' court to consent to a person named in an Extradition arrest warrant being proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his personal freedom, for an offence committed before his surrender other than the offence specified in the Extradition arrest warrant or an offence disclosed by the same facts as the offence specified in that warrant by the issuing State in respect of that person.

(2) Where the Central Authority or magistrates' court receives a request for consent as referred to subsection (1) for a person named in an Extradition arrest warrant, transmitted in accordance with section 8, from the issuing judicial authority in a State-

- (a) consent must be given where the offence listed in the Extradition arrest warrant is itself subject to surrender in accordance with the provisions of this Act;
- (b) consent must be refused on the grounds referred to in sections 28, 35, 30(1) and 32;
- (c) consent may be refused on the grounds referred to in sections 27(2), 29, 30(2), 31, 33 and 33A.

(3) The magistrates' court must make a decision as to consent within 30 days of receipt of the request referred to in subsection (1).

Further conditions for surrender– subsequent surrender.

16.(1) A person shall not be surrendered under this Act unless–

- (a) under the law of the issuing State the person shall not be surrendered to another State pursuant to an Extradition arrest warrant issued by a judicial authority in that State in respect of an offence committed or alleged to have been committed before his surrender; or
- (b) an undertaking in writing is given to the Central Authority by the issuing judicial authority or any authority competent to issue such an undertaking in the issuing State that the person will not be surrendered to another State pursuant to an Extradition arrest warrant issued by a judicial authority in that State in respect of such an offence.

(1A) It shall be presumed that the law of the issuing State is such as to allow the surrender of the person by virtue of subsection (1)(a) unless it is demonstrated otherwise on the balance of probabilities.

(2) Subject to subsection (3), a person shall not be surrendered under this Act unless–

- (a) under the law of the issuing State a person shall not be surrendered; or
- (b) an undertaking in writing is given to the Central Authority by the issuing judicial authority or any authority competent to issue such an undertaking in the issuing State that the person will not be surrendered,

to another State pursuant to an Extradition arrest warrant issued by a judicial authority in that State–

(i)

- (a) before the expiration of a period of 45 days from the date of the person's final discharge in respect of the offence for which he is surrendered to the issuing State during which time he shall be free to leave the issuing State; or
- (b) unless having been so discharged he leaves the issuing State and later returns thereto; or
- (ii) unless—
 - (a) he voluntarily gives his consent to being so surrendered to another State and is fully aware of the consequences of his so doing;
 - (b) that consent is given before the competent judicial authority of the issuing State; and
 - (c) he obtains or is given the opportunity to obtain professional legal advice in relation to the matters to which this paragraph applies before he gives that consent.

(2A) It shall be presumed that the law of the issuing State is such as to allow the surrender of the person by virtue of subsection (2)(a) unless it is demonstrated otherwise on the balance of probabilities.

(3) The surrender of a person under this Act shall not be refused on the ground that, in relation to the issuing State, there is no compliance with subsection (2)(a) or (b), provided that—

- (a) in relation to the person, the magistrates' court is satisfied as to the matters specified in section 15(6)(c)(ii); or
- (b) the Central Authority consents under section 16A.

Incoming request for consent for subsequent surrender.

16A.(1) An issuing judicial authority may request the magistrates' court's consent to a person named in an Extradition arrest warrant being surrendered by the issuing State concerned to another State pursuant to an Extradition arrest warrant issued by a judicial authority in that other State in respect of that person.

(2) Where the Central Authority or magistrates' court receives a request for consent as referred to in subsection (1) for a person named in an Extradition arrest warrant, transmitted in accordance with sections 7 and 8, from the issuing judicial authority in a State—

- (a) consent must be given where the offence listed in the Extradition arrest warrant is itself subject to surrender in accordance with the provisions of the Framework Decision;
 - (b) consent must be refused on the grounds referred to in sections 28, 35, 30(1) and 32;
 - (c) consent may be refused on the grounds referred to in sections 27(2), 29, 30(2), 31, 33 and 33A.
- (3) The magistrates' court must make a decision as to consent within 30 days of receipt of the request referred to in subsection (1).

Surrender subject to undertaking—subsequent extradition.

17.(1) A person shall not be surrendered under this Act unless—

- (a) under the law of the issuing State the person cannot be subsequently extradited to a third country, in respect of an offence committed or alleged to have been committed in that third country, without the consent of the magistrates' court; or
- (b) the issuing judicial authority or any authority competent to issue such an undertaking in the issuing State gives an undertaking in writing that the person will not be extradited to a third country, in respect of an offence committed or alleged to have been committed in that third country, without the consent of the magistrates' court.

(1A) It shall be presumed that the law of the issuing State is such as to allow the surrender of the person by virtue of subsection (1)(a) unless it is demonstrated otherwise on the balance of probabilities.

(2) The issuing judicial authority or any authority competent to make such a request in the issuing State may request in writing the magistrates' court to consent to the extradition to a third country by the issuing State of a person surrendered to the issuing State under this Act.

(3) The magistrates' court shall not give its consent to a request under subsection (2) unless the extradition of the person concerned to the third country in respect of the offence concerned would be permitted under the law of Gibraltar, were a request for such extradition to be received by the authorities in Gibraltar from the third country.

Postponed or conditional surrender.

17A.(1) The magistrates' court may, after deciding to execute the Extradition arrest warrant, postpone surrender of the requested person so that he may be prosecuted in Gibraltar or, if he

has already been sentenced, so that he may serve in Gibraltar a sentence passed for an act other than that referred to in the Extradition arrest warrant.

(2) Instead of postponing the surrender, the magistrates' court may temporarily surrender the requested person to the issuing State subject to the receipt of an undertaking from the issuing judicial authority, or any authority competent to issue such an undertaking in the issuing State, as set out in subsection (3).

(3) An undertaking made in accordance with subsection (2) must—

- (a) be determined by mutual agreement between the magistrates' court and the issuing judicial authority, or any authority competent to issue such an undertaking in the issuing State;
- (b) be in writing;
- (c) be binding on all the relevant authorities in the issuing State; and
- (d) include provision that the person be returned to the Gibraltar authorities on conclusion of those proceedings,

and may include—

- (e) such other provision as the magistrates' court deems appropriate including but not limited to a requirement that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the issuing State.

Information on period of detention.

17B. Where a person is surrendered pursuant to an Extradition arrest warrant, all information concerning the duration of the detention of the requested person on the basis of the Extradition arrest warrant shall be transmitted by the magistrates' court to the issuing judicial authority at the time of the surrender.

Search and seizure powers and handing over of property.

18.(1) The powers to enter and search provided for in the Criminal Procedure and Evidence Act 2011 shall be available in connection with an Extradition arrest warrant and for the purposes of satisfying section 12(a) of that Act the matters set out in the Extradition arrest warrant shall be deemed to constitute an indictable offence.

(2) Any property seized under pursuant to subsection (1) must, if a person is surrendered under this Act, be handed over to any person duly authorised by the issuing State to receive it,

as soon as may be after the surrender of the person, and the said property must be so handed over notwithstanding that the surrender of the person cannot be carried out by reason of the death or escape from custody of the person claimed.

(3) Any property seized pursuant to subsection (1) may, if criminal proceedings to which the property relates are pending in Gibraltar, be retained in Gibraltar for the purposes of those proceedings or may, if the Central Authority after consultation with the Attorney General so directs, be handed over to the issuing State subject to the issuing State agreeing to return the property.

(4) This section shall not operate to abrogate any rights lawfully vested in the Crown in right of the Government of Gibraltar, or any person, over any property to which this section applies and, where any such rights exist, the property shall not be handed over unless an undertaking is given by the issuing State that it will return the property as soon as practicable after the trial of the person surrendered and without charge to the Government or person in whom such rights vest.

Circumstances where bail or release from custody not permissible.

19. A person shall not be remanded on bail or otherwise released from custody under this Act if—

(a)

- (i) the person has been sentenced to a term of imprisonment for an offence of which he was convicted in Gibraltar;
- (ii) on the date of his being remanded or on which he would, but for this paragraph, be entitled to be released, all or part of the term of imprisonment remains unexpired; and
- (iii) the person is required to serve all or part of the remainder of that term of imprisonment; or

(b)

- (i) the person has been charged with or convicted of an offence in Gibraltar; and
- (ii) on the date of his being remanded or on which he would, but for this paragraph, be entitled to be released, he is required to be in custody by virtue of having been remanded in custody pending trial for that offence or the imposition of sentence in respect of that offence.

Transit through Gibraltar.

20.(1) Subject to subsection (1A), transit through Gibraltar of a person being conveyed from an executing State to an issuing State, upon his surrender pursuant to an Extradition arrest warrant, shall be permitted where the Central Authority receives a request in that behalf from the issuing State and where the issuing State provides the Central Authority with the following information–

- (a) the identity and nationality of the person to whom the Extradition arrest warrant applies;
- (b) information showing that an Extradition arrest warrant has been issued by the issuing State in respect of the person;
- (c) the nature and legal classification under the law of the issuing State of the offence to which the Extradition arrest warrant relates; and
- (d) the circumstances in which the offence specified in the Extradition arrest warrant was committed or is alleged to have been committed, including the date and place of its commission.

(1A) The Central Authority may–

- (a) refuse the transit through Gibraltar of a Gibraltarian or a person who is a resident of Gibraltar when the transit of that person is requested for the purpose of the execution of a custodial sentence or detention order under the Extradition arrest warrant, or
- (b) allow transit through Gibraltar of a Gibraltarian or a person who is a resident of Gibraltar on the condition that the requested person, after being heard in the issuing State, is returned to Gibraltar to serve the custodial sentence or detention order passed against him in the issuing State.

(1B) A transit request through Gibraltar and the information set out in subsection (1) may be addressed to the Central Authority by any means capable of producing a written record.

(1C) When responding to a transit request the Central Authority must notify its decision by the same procedure as the request received in subsection (1B).

(2) The transit of a person through Gibraltar shall be supervised by a police officer if the Central Authority considers it appropriate, and where a person's transit is so supervised the person shall be deemed to be in the custody of a police officer who accompanies him.

(3)

- (a) This subsection applies to an aircraft that has taken off from a place (other than Gibraltar International Airport) and that is scheduled to land in a place (other than Gibraltar International Airport) and on board which there is a person who is being conveyed to an issuing State upon his surrender pursuant to an Extradition arrest warrant.
 - (b) Where an aircraft to which this subsection applies lands (for whatever reason) in Gibraltar, the issuing State shall, upon its landing or as soon as may be after it lands, provide the Central Authority with the information referred to in subsection (1).
 - (c) While an aircraft to which this subsection applies is in Gibraltar, a person referred to in paragraph (a) who is on board that aircraft shall be deemed to be in transit through Gibraltar and subsection (2) shall apply accordingly.
- (4) Where a person has been extradited by a third country to a State this section shall apply subject to the modifications that—
- (a) the reference to an executing State shall be construed as a reference to a third State;
 - (b) references to an Extradition arrest warrant shall be construed as references to an extradition request; and
 - (c) references to an issuing State shall be construed as references to a State.
- (5) In this section “executing State” means, in relation to an Extradition arrest warrant, a State (a judicial authority of which has ordered the arrest and surrender to the issuing State, pursuant to the Extradition arrest warrant, of a person in respect of whom that warrant was issued).

Conflict in surrender requests.

21.(1) Where the Central Authority receives two or more Extradition arrest warrants in respect of a person, neither of which or not all of which, as the case may be, have been issued by the same issuing State, the Central Authority shall, where the magistrates’ court has not yet made an order under section 11, or subsection (1) of section 12, in relation to the person, inform the magistrates’ court as soon as reasonably possible of the receipt by it of those warrants and the magistrates’ court shall, having regard to all the circumstances, decide, in relation to which of those Extradition arrest warrants—

- (a) the Central Authority shall perform functions under section 9; or

- (b) where the Central Authority has already performed such functions in relation to one of those Extradition arrest warrants, whether the court shall perform functions under section 11 or 12, as may be appropriate.
- (2) Without prejudice to the generality of subsection (1), the magistrates' court shall in making a decision under subsection (1) have regard to—
- (a) the seriousness of the offences specified in the Extradition arrest warrants concerned;
 - (b) the places where the offences were committed or are alleged to have been committed;
 - (c) the dates on which the Extradition arrest warrants were issued; and
 - (d) whether the Extradition arrest warrants concerned were issued for the purposes of bringing proceedings for an offence against the person named in the warrants or for the purposes of executing a sentence or detention order in respect of the person.

Conflict between surrender and extradition request.

22.(1) If the Central Authority in Gibraltar receives an Extradition arrest warrant in respect of a person and a request from a third country for the extradition of that person, the Central Authority shall, where the magistrates' court has not yet made an order under section 11, or subsection (1) of section 12, in relation to the person, inform the magistrates' court as soon as may be of the receipt by it of the Extradition arrest warrant and the request for extradition, and the magistrates' court shall, having regard to all the circumstances, decide whether functions shall be performed—

- (a) in relation to the Extradition arrest warrant, under this Act; or
 - (b) in relation to the request for extradition to the third country under the law of Gibraltar relating to extradition.
- (2) Without prejudice to the generality of subsection (1), the magistrates' court shall in making a decision under subsection (1) have regard to—
- (a) the seriousness of—
 - (i) the offence specified in the Extradition arrest warrant; and
 - (ii) the offence to which the request for extradition relates;

- (b) the places where the offences concerned were committed or are alleged to have been committed;
- (c) the date on which the Extradition arrest warrant was issued and the date on which the request for extradition was made; and
- (d) whether the Extradition arrest warrant was issued, or the request for extradition was made, for the purposes of bringing proceedings for an offence against the person concerned or for the purposes of executing a sentence or detention order in respect of the person; and
- (e) the relevant extradition provisions.

(3) If the Central Authority receives an Extradition arrest warrant in respect of a person and a request is received from the International Criminal Court for the arrest and surrender of the same person, the Central Authority shall, where an order has not yet been made under section 11 or 12, in relation to that person, so inform the magistrates' court, and functions shall not be performed under this Act in relation to the Extradition arrest warrant, unless the arrest and surrender of that person pursuant to a request by the International Criminal Court is prohibited, or not provided for, under the law of Gibraltar.

Competing international obligations.

22A.(1) This Act shall not prejudice the obligations of the Central Authority and magistrates' court where the person named in the Extradition arrest warrant has been extradited to Gibraltar from a third country and the person is protected by speciality conditions in the extradition agreement.

(2) Where a person has been extradited to Gibraltar from a third country and a State requests that person's surrender under an Extradition arrest warrant, the Central Authority must take all necessary measures to request forthwith the consent of the third country, which extradited the person, to surrender the person to the State which issued the Extradition arrest warrant.

(3) Following the request referred to in subsection (2) and pending the decision of the third country, the Central Authority shall ensure the material conditions necessary for effective surrender remain fulfilled.

(4) The time limits referred to in sections 11(3A), 12(3A), 11(3B) and 12(3B) shall not start to run until the speciality rules cease to apply to the person referred to in this section.”.

Notification of decision.

22B. The magistrates' court shall notify the judicial authority immediately of the decision on the action to be taken under this Part on the Extradition arrest warrant transmitted in accordance with section 8.

CHAPTER 2

ISSUE OF EXTRADITION ARREST WARRANT BY THE GIBRALTAR AUTHORITIES

Interpretation.

23. In this Chapter "Extradition arrest warrant" means a warrant to which this Act applies issued by the magistrates' court in accordance with this Chapter, for the purposes of—

- (a) the arrest in a State of that person; and
- (b) the surrender of that person to the Gibraltar authorities by the State concerned.

Issue of warrant.

24.(1) The magistrates' court may, upon an application made by or on behalf of the Attorney General, issue an Extradition arrest warrant in respect of a person—

- (a) where it is satisfied upon reasonable grounds that—
 - (i) a warrant was issued for the arrest of that person but was not executed; and
 - (ii) the person is not in Gibraltar; and
- (b) where—
 - (i) the person would, if convicted, be liable to a term of imprisonment of 12 months or more than 12 months; or
 - (ii) a term of imprisonment of not less than 4 months has been imposed on the person in respect of the offence concerned and the person is required to serve all or part of that term of imprisonment.

(2) An Extradition arrest warrant shall, in so far as is practicable, be in the form set out in Schedule 1 and shall specify—

- (a) the identity and the nationality of the person to whom it relates;

- (b) the name, address, telephone number, fax number and e-mail address of the magistrates' court;
 - (c) the nature and legal classification of the offence to which the Extradition arrest warrant relates including a description thereof and including whether or not the offence corresponds to a description of offence set out in Schedule 2;
 - (d) evidence of a conviction, sentence or detention order is immediately enforceable against the person, or that a warrant for his arrest has been issued in respect of that offence;
 - (e) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence; and
 - (f)
 - (i) the penalties to which the person named in the Extradition arrest warrant would, if convicted of the offence to which the Extradition arrest warrant relates, be liable;
 - (ii) where the person named in the Extradition arrest warrant has been convicted of the offence specified therein and a sentence has been imposed in respect thereof, the penalties of which that sentence consists; or
 - (iii) where the person named in the Extradition arrest warrant has been convicted of the offence specified therein but has not yet been sentenced, the penalties to which he is liable in respect of the offence; and
 - (g) if possible, other consequences of the offence.
- (3) Where it is not practicable for the Extradition arrest warrant to be in the form referred to in subsection (2), it shall include such information, additional to the information specified in subsection (2), as would be required to be provided were it in that form.
- (4) Where the executing State does not accept an Extradition arrest warrant in English, a translation in that State's official language or in a language that it has declared it will accept, must accompany the Extradition arrest warrant.

Person requested – trial in absentia.

24A.(1) Where the magistrates' court receives a request from an executing authority that the person named in an Extradition arrest warrant issued by the magistrates' court has requested a

copy of the judgment prior to his surrender, the magistrates' court must provide it to the person named in the Extradition arrest warrant via the executing authority.

- (2) A request under subsection (1) is for information purposes only and must not–
- (a) delay the surrender procedure;
 - (b) delay the execution of the Extradition arrest warrant;
 - (c) be regarded as formal service of the judgment; and
 - (d) actuate any time limits applicable for requesting a retrial or appeal.

Person surrendered – review of detention.

24B. Where a person is surrendered to the Gibraltar authorities subject to a requirement that–

- (a) he will be personally served with the enforceable judgment without delay after the surrender and will be expressly informed of his right to a retrial or appeal in which he has the right to participate and which allows the merits of the case including fresh evidence, to be re- examined, and which may lead to the original judgment being reversed; and
- (b) he will be informed of the time frame within which he has to request such a retrial or appeal, as mentioned in the Extradition arrest warrant,

and he has requested a retrial or appeal, the detention of that person pending such retrial or appeal shall, until these proceedings are finalised, be reviewed by the Magistrates' Court either on a regular basis or upon the request of the person concerned and in conducting such a review the court shall in particular consider the suspension or interruption of the detention and the retrial or appeal must begin within due time after the person is surrendered.

Additional useful information.

24C. Where the magistrates' court has requested the arrest and surrender of a person pursuant to an Extradition arrest warrant in accordance with section 24 it may at any time forward any additional useful information to the executing judicial authority in that State.

Imprisonment following surrender.

25.(1) Where a person is surrendered to the Gibraltar authorities pursuant to an Extradition arrest warrant, then any term of imprisonment that the person is required to serve by virtue of the imposition of a sentence by a court in Gibraltar (whether before or after the person's surrender) in respect of the offence specified in that Extradition arrest warrant shall be reduced

by an amount equal to any period of time spent by that person in custody or detention in the executing State in contemplation, or in consequence, of the execution of the Extradition arrest warrant.

(2) In this section “executing State” means, in relation to an Extradition arrest warrant, a State (a judicial authority of which has ordered the arrest and surrender to the Gibraltar authorities pursuant to the Extradition arrest warrant, of a person in respect of whom that warrant was issued).

Effects of the surrender (speciality).

25A.(1) Subject to subsections (2) and (3), where a person is surrendered to the Gibraltar authorities pursuant to an Extradition arrest warrant, he shall not be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his personal freedom, for an offence committed before his surrender other than the offence specified in the Extradition arrest warrant or an offence disclosed by the same facts as the offence specified in that warrant.

(2) Subsection (1) does not apply in the following cases—

- (a) when the person having had the opportunity to leave Gibraltar has not done so within 45 days of his or her final discharge, or has returned to Gibraltar after leaving it;
- (b) where the offence is not punishable on conviction by a term of imprisonment or detention;
- (c) in circumstances where upon conviction he is liable to a term of imprisonment or detention and such other penalty as does not involve a restriction of his personal liberty, and the magistrates’ court is satisfied that the said other penalty only will be imposed should he be convicted of the offence concerned;
- (ca) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or measure in lieu thereof, even if the penalty or a measure may give rise to a restriction of his personal liberty;
- (d) where the person consented to be surrendered and that person, where appropriate and at the appropriate time, renounced the speciality rule in accordance with the Framework decision;
- (e) where, after the surrender, the person expressly and voluntarily renounces entitlement to the speciality rule with regard to specific offences committed or alleged to have been committed by him before his surrender.

- (f) where, the executing judicial authority which surrendered the person has consented to the proceedings, sentencing, detention or other restriction following a request to it by the magistrates' court.
- (3) Renunciation of the speciality rule, in accordance with subsection (2)(e), must be—
- (a) made before the magistrates' court;
 - (b) recorded by the magistrates' court;
- and the person must—
- (c) voluntarily renounce the speciality rule after;
 - (d) having obtained, or having been given the opportunity of obtaining or being provided with, professional legal advice before renouncing; and
 - (e) be aware of the consequences of his so renouncing the speciality rule.
- (4) The Central Authority may request consent from the executing judicial authority, in accordance with section 25A(2)(f), by making an application to the executing authority in the executing State—
- (a) by or on behalf of the Attorney General; and
 - (b) accompanied by the information in section 24(2) and, if need be, a translation into the official language of the executing State or a language that the executing State has declared it will accept.

Effects of the surrender (subsequent surrender or extradition).

25B(1) Subject to subsection (2), where a person is surrendered to the Gibraltar authorities pursuant to an Extradition arrest warrant, that person shall not be—

- (a) surrendered to a State other than the executing State pursuant to an Extradition arrest warrant issued by a judicial authority in that other State in respect of an offence committed or alleged to have been committed before his surrender to the Gibraltar authorities; or
 - (b) extradited to a third country in respect of an offence committed or alleged to have been committed before his surrender to the Gibraltar authorities without the consent of the executing judicial authority which surrendered the person.
- (2) Subsection (1) does not apply in any of the following cases—

- (a) when the person having had the opportunity to leave Gibraltar has not done so within 45 days of his final discharge, or has returned to Gibraltar after leaving it;
 - (b) where, after the surrender to the Gibraltar authorities, the person expressly and voluntarily renounces entitlement to the speciality rule with regard to specific offences committed or alleged to have been committed by him before his surrender;
 - (c) where the person is not subject to the speciality rule in accordance with section 25A(2)(a), (d), (e) or (f).
- (3) Renunciation of the speciality rule, in accordance with subsection (2)(b), must be—
- (a) made before the magistrates' court;
 - (b) recorded by the magistrates' court;
- and the person must—
- (c) voluntarily renounce the speciality rule after;
 - (d) having obtained, or having been given the opportunity of obtaining or being provided with, professional legal advice before renouncing; and
 - (e) be aware of the consequences of his so renouncing the speciality rule.

Request for the handing over of property.

25C.(1) Where the magistrates' court has issued an Extradition arrest warrant under section 24 it may request that the executing judicial authority seize and hand over property which—

- (a) may be required as evidence; or
 - (b) has been acquired by the person named in the Extradition arrest warrant as a result of the offence.
- (2) Any rights which the executing State or a third party may have in relation to property handed over in accordance with subsection (1) are preserved.
- (3) The Central Authority must return property handed over under subsection (1), without charge to the executing State, after the criminal proceedings have concluded.

PART 3

PROHIBITION ON SURRENDER**Exceptions to duty to surrender.**

26. A person shall not be surrendered under this Act if–

- (a) his surrender would be incompatible with Gibraltar's obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950, as amended by Protocol No. 11 done at Strasbourg on the 11th day of May 1994; or
- (b) his surrender would constitute a contravention of any provision of the Constitution (other than for the reason that the offence specified in the Extradition arrest warrant is an offence to which section 27(1)(b) applies); or
- (c) there are reasonable grounds for believing that–
 - (i) the Extradition arrest warrant was issued in respect of the person for the purposes of facilitating his prosecution or punishment in the issuing State for reasons connected with his sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation; or
 - (ii) in the prosecution or punishment of the person in the issuing State, he will be treated less favourably than a person who–
 - (a) is not of his sex, race, religion, nationality or ethnic origin;
 - (b) does not hold the same political opinions as him;
 - (c) speaks a different language than he does; or
 - (d) does not have the same sexual orientation as he does; or
 - (iii) that were the person to be surrendered to the issuing State–
 - (a) he would be sentenced to death, or a death sentence imposed on him would be carried out; or
 - (b) he would be tortured or subjected to other inhuman or degrading treatment.

Exceptions to duty to surrender: supplementary.

27.(1) A person shall not be surrendered to an issuing State under this Act in respect of an offence unless–

- (a) the offence corresponds to an offence under the law of Gibraltar, and–
 - (i) under the law of the issuing State the offence is punishable by imprisonment or detention for a maximum period of not less than 12 months; or
 - (ii) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence in the issuing State, and the person is required under the law of the issuing State to serve all or part of that term of imprisonment; or
 - (b) the offence is an offence to which Schedule 2 applies or is an offence that consists of conduct specified in that Schedule, and under the law of the issuing State the offence is punishable by imprisonment for a maximum period of not less than 3 years.
- (2) Without prejudice to the application of subsection (1)–
- (a) if the conduct which constitutes the offence relates to a tax or duty, it is immaterial that the law of Gibraltar does not impose the same kind of tax or duty, or does not contain rules of the same kind as those of the law of the issuing State; or
 - (b) if the conduct constituting the offence relates to customs or exchange, it is immaterial that the law of Gibraltar does not contain rules of the same kind as those of the law of the issuing State.

Exceptions to duty to surrender: pardon and immunity.

28.(1) A person shall not be surrendered under this Act where he has been granted a pardon by the Governor in respect of an offence consisting of an act or omission that constitutes in whole or in part the offence specified in the Extradition arrest warrant issued in respect of him.

(2) A person shall not be surrendered under this Act where he has, in accordance with the law of the executing State, become immune, by virtue of any amnesty or pardon, from prosecution or punishment in the executing State for the offence specified in the Extradition arrest warrant issued in respect of him.

(3) A person shall not be surrendered under this Act where he has, by virtue of any Act, become immune from prosecution or punishment for an offence consisting of an act or omission that constitutes in whole or in part the offence specified in the Extradition arrest warrant issued in respect of him.

Exceptions to duty to surrender: expiration of time.

29. A person shall not be surrendered under this Act where—

- (a) the act or omission constituting the offence specified in the Extradition arrest warrant issued in respect of him is an offence under the law of Gibraltar; and
- (b) the person could not, by reason of the passage of time, be proceeded against, in Gibraltar, in respect of the second mentioned offence.

Exceptions to duty to surrender: where final judgment already given elsewhere.

30.(1) A person shall not be surrendered under this Act for the purpose of his being proceeded against in the issuing State for an offence consisting of an act or omission that constitutes in whole or in part an offence in respect of which final judgment has been given in Gibraltar or a State provided that, where a sentence has been handed down, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing State.

(2) A person shall not be surrendered under this Act for the purpose of his being proceeded against in the issuing State for an offence consisting of the act or omission that constitutes an offence in respect of which final judgment has been given in a third country, provided that where a sentence of imprisonment or detention was imposed on the person in the third country in respect of the second mentioned offence—

- (a) the person is serving or has completed serving the sentence; or
- (b) the person is otherwise no longer liable under the law of the third country to serve any period of imprisonment or detention in respect of the offence.

Exceptions to duty to surrender: proceedings current in Gibraltar.

31. A person shall not be surrendered under this Act if—

- (a) proceedings have been brought in Gibraltar against the person for an offence consisting of an act or omission that constitutes in whole or in part the offence specified in the Extradition arrest warrant issued in respect of him; or
- (b) the Attorney General has decided not to bring, or to enter a nolle prosequi in or discontinued, proceedings against the person for an offence consisting of an act or omission that constitutes in whole or in part the offence specified in the Extradition arrest warrant issued in respect of him, for reasons other than that an Extradition arrest warrant has been issued in respect of that person.

Exceptions to duty to surrender: where prosecution not possible in Gibraltar by reason of age.

32. A person shall not be surrendered under this Act if the offence specified in the Extradition arrest warrant issued in respect of him corresponds to an offence under the law of Gibraltar in respect of which a person of the same age as the person in respect of whom the Extradition arrest warrant was issued could not be proceeded against in Gibraltar by reason of his age.

Exceptions to duty to surrender: where offence has a nexus with Gibraltar or otherwise outside the issuing State.

33.(1) A person shall not be surrendered under this Act if the offence specified in the Extradition arrest warrant issued in respect of him was committed or is alleged to have been committed in a place other than the issuing State and the act or omission of which the offence consists does not, by virtue of having been committed in a place other than Gibraltar, constitute an offence under the law of Gibraltar.

(2) A person shall not be surrendered under this Act by reason of forum if the surrender would not be in the interests of justice.

(3) For the purposes of subsection (2) a surrender would not be in the interests of justice if the magistrates' court-

- (a) decides that a substantial measure of the person's relevant activity was performed in Gibraltar; and
- (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the surrender should not take place.

(4) The specified matters relating to the interests of justice are—

- (a) the place where most of the loss or harm resulting from the offence occurred or was intended to occur;
- (b) the interests of any victims of the offence;
- (c) any belief of the Attorney General that Gibraltar is not the most appropriate jurisdiction in which to prosecute the person in respect of the conduct constituting the offence;
- (d) were the person to be prosecuted in Gibraltar for an offence that corresponds to the offence, whether evidence necessary to prove the offence is or could be made available in Gibraltar;

- (e) any delay that might result from proceeding in one jurisdiction rather than another;
- (f) the desirability and practicability of all prosecutions relating to the offence taking place in one jurisdiction, having regard (in particular) to—
 - (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and
 - (ii) the practicability of the evidence of such persons being given in Gibraltar or in jurisdictions outside Gibraltar;
- (g) the person's connections with Gibraltar.

(5) In deciding whether the surrender would not be in the interests of justice, the magistrates' court must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the territory concerned.

(6) If, on an application by the Attorney General, it appears to the magistrates' court that the Attorney General has considered the offences for which the person could be prosecuted in Gibraltar in respect of the conduct constituting the offence specified in the Extradition arrest warrant, the magistrates' court must make the Attorney General a party to the proceedings on the question of whether the person's surrender is barred by reason of forum.

(7) In this section "the person's relevant activity" means activity which is material to the commission of the offence specified in the Extradition arrest warrant and which is alleged to have been performed by the person.

Effect of Attorney General's certificate on forum proceedings.

33AA.(1) The magistrates' court hearing proceedings under section 33(2) to (7) (the "forum proceedings") must decide that the surrender is not barred by reason of forum if (at a time when the magistrates' court has not yet decided the proceedings) it receives an Attorney General's certificate relating to the Extradition arrest warrant.

(2) That duty to decide the forum proceedings in that way is subject to the determination of any question relating to the Attorney General's certificate raised in accordance with section 33AC.

(3) The Attorney General may apply for the forum proceedings to be adjourned for the purpose of assisting him-

- (a) in considering whether to give an Attorney General's certificate relating to the surrender,

- (b) in giving such a certificate, or
 - (c) in sending such a certificate to the magistrates' court.
- (4) If such an application is made, the magistrates' court must—
- (a) adjourn the forum proceedings until the application is decided; and
 - (b) continue the adjournment, for such period as appears to the judge to be reasonable, if the application is granted.
- (5) But the magistrates' court must end the adjournment if the application is not granted.

Attorney General's certificate.

33AB.(1) An "Attorney General's certificate" is a certificate given by the Attorney General which—

- (a) certifies both matter A and matter B, and
 - (b) certifies either matter C or matter D.
- (2) Matter A is that he has considered the offences for which the person could be prosecuted in Gibraltar in respect of the conduct constituting the offence specified in the Extradition arrest warrant.
- (3) Matter B is that he has decided that there are one or more such offences that correspond to the offence specified in the Extradition arrest warrant (the "corresponding offences").
- (4) Matter C is that—
- (a) he, together with the relevant law enforcement agency in Gibraltar, has made a formal decision as to the prosecution of the person for the corresponding offences,
 - (b) that decision is that the person should not be prosecuted for the corresponding offences, and
 - (c) the reason for that decision is a belief that—
 - (i) there would be insufficient admissible evidence for the prosecution; or
 - (ii) the prosecution would not be in the public interest.

(5) Matter D is that he believes that the person should not be prosecuted for the corresponding offences because there are concerns about the disclosure of sensitive material in—

- (a) the prosecution of the person for the corresponding offences, or
- (b) any other proceedings.

(6) In relation to the surrender of any person under this Act, neither this section nor any other rule of law (whether or not contained in an enactment) may require the Attorney General—

- (a) to consider any matter relevant to giving an Attorney General's certificate, or
- (b) to consider whether to give an Attorney General's certificate.

(7) In this section “sensitive material” means material which appears to the Attorney General to be sensitive, including, but not limited to, material appearing to be sensitive on grounds relating to—

- (a) the sovereignty, security, public order or other essential interests of Gibraltar, or
- (b) the prevention or detection of crime (including grounds relating to the identification or activities of witnesses, informants or any other persons supplying information to the police or any other law enforcement agency who may be in danger if their identities are revealed).

Questioning of Attorney General's certificate.

33AC.(1) No decision of the Attorney General relating to an Attorney General's certificate in respect of a person's surrender (a “relevant certification decision”) may be questioned except on an appeal under section 38 against an order for that surrender.

(2) For the purpose of—

- (a) determining whether to give permission for a relevant certification decision to be questioned, and
- (b) determining any such question (if that permission is given),

the Supreme Court must apply the procedures and principles which would be applied by it on an application for judicial review.

(3) In a case where the Supreme Court quashes an Attorney General's certificate, the Supreme Court is to decide the question of whether or not the surrender is barred by reason of forum.

- (4) Where the Supreme Court is required to decide that question by virtue of subsection (3)—
- (a) sections 33 to 33AB and this section apply in relation to that decision (with the appropriate modifications) as they apply to a decision by the magistrates' court; and
 - (b) in particular—
 - (i) a reference in this section to an appeal under section 38 has effect as a reference to an appeal under section 44 to the Privy Council;
 - (ii) a reference in this section to the Supreme Court has effect as a reference to the Privy Council.

Interpretation of sections 33 to 33AC

33AD.(1) This section applies for the purposes of sections 33 to 33AC (and this section).

- (2) These expressions have the meanings given—

“forum proceedings” has the meaning given in section 33AA(1);

“Attorney General's certificate” has the meaning given in section 33AB(1).

(3) In determining for any purpose whether an offence corresponds to the offence specified in the Extradition arrest warrant, regard must be had, in particular, to the nature and seriousness of the two offences.

(4) A reference to a formal decision as to the prosecution of a person for an offence is a reference to a decision (made after complying with, in particular, any applicable requirement concerning any relevant code of practice) that the person should, or should not, be prosecuted for the offence.

Exceptions to duty to surrender: execution of sentence.

33A. A person shall not be surrendered under this Act if the Extradition arrest warrant has been issued for the purposes of the execution of a custodial sentence or detention order and—

- (a) the person named in the Extradition arrest warrant is either—
 - (i) a Gibraltarian;
 - (ii) a resident of Gibraltar; or

- (iii) staying in Gibraltar; and
- (b) the court makes an order requiring the person to serve the period of the sentence in accordance with the law of Gibraltar.

Exceptions to duty to surrender: trial in absentia.

34.(1) Where the person named in the Extradition arrest warrant did not appear at the trial in which he has been sentenced to a term of imprisonment or detention, that person shall not be surrendered unless the procedural requirements in subsection (2) have been complied with.

- (2) The requirements referred to in subsection (1) are—
 - (a) that in due time—
 - (i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the enforceable judgment, or by other means he actually received official information of the scheduled date and place of the trial in such a way that it was unequivocally established that he was aware of the trial; and
 - (ii) was informed that an enforceable judgment may be handed down in his absence; or
 - (b) being aware of the scheduled trial, had given a mandate to a legal representative, either appointed by himself or by the State, to defend him at the trial and was in fact defended by that legal representative at the trial; or
 - (c) after being served with the enforceable judgment and being expressly informed about his right to a retrial or appeal in which he has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined and which may lead to the original judgment being reversed—
 - (i) he expressly stated that he does not contest the judgment; or
 - (ii) he did not request a retrial or appeal within the applicable time; or
 - (d) was not personally served with the enforceable judgment but—
 - (i) he will be personally served with the enforceable judgment without delay after the surrender and will be expressly informed of his right to a retrial or appeal in which he has the right to participate and which allows the merits of the case including fresh evidence, to be re-examined, and which may lead to the original judgment being reversed; and

- (ii) he will be informed of the time frame within which he has to request such a retrial or appeal, as mentioned in the Extradition arrest warrant.

(3) Where subsection (2)(d) applies and the person named in the Extradition arrest warrant has not previously received any official information about the existence of the criminal proceedings against him, he may, when being informed of the content of the Extradition arrest warrant, request to receive a copy of the enforceable judgment before being surrendered.

(4) Where the issuing authority is informed of the request under subsection (3) the judgment shall be provided to the person sought via the executing authority.

(5) A request under subsection (3) is for information purposes only and must–

- (a) not delay the surrender procedure;
- (b) not delay the execution of the Extradition arrest warrant;
- (c) not be regarded as formal service of the judgment; and
- (d) not actuate any time limits applicable for requesting a retrial or appeal.

Exceptions to duty to surrender: withdrawal of Extradition arrest warrant.

34A.(1) The following provisions of this section apply if at any time in the relevant period the magistrates' court is informed by the issuing authority that an Extradition arrest warrant issued in respect of a person has been withdrawn.

(2) The relevant period is the period–

- (a) starting when the person is first brought before the appropriate judge following his arrest under this Act; and
- (b) ending when the person is surrendered in pursuance of the warrant or discharged.

(3) The magistrates' court must order the person's discharge in a case to which subsections (2) and (3) apply.

(4) If the person is not before the magistrates' court at the time the court orders his discharge, the court must inform him of the order as soon as practicable.

Exceptions to duty to surrender: immunity and waiver.

35.(1) Subject to subsection (2), a person who, by virtue of his holding any office or other position, is under the law of Gibraltar immune from prosecution for any offence shall not while he holds such office or position be surrendered under this Act.

(2) As from the day the magistrates' court is informed that a person has waived the privilege or immunity referred to in subsection (1) the time limits referred to in sections 11(3A), 12(3A), 11(3B) and 12(3B) shall apply to a person who is requested under an Extradition arrest warrant and the Central Authority must ensure that the material conditions necessary for effective surrender are fulfilled when the requested person referred to in subsection (1) no longer enjoys such a privilege or immunity.

(3) Where the power to waive a privilege or immunity lies with an authority in Gibraltar, the magistrates' court must, when seeking to execute an Extradition arrest warrant transmitted in accordance with section 8, request that the authority waive the privilege or immunity forthwith.

(4) Where the power to waive a privilege or immunity lies with an authority of another State or international organisation and the magistrates' court has issued the Extradition arrest warrant in accordance with section 24, the magistrates' court must make a request to the authority of the other State or international organisation that it waive the privilege or immunity preventing the execution of the Extradition arrest warrant.

Schedule.

36. The Schedules to this Act shall have effect.

37. *Deleted.*

PART 4

APPEALS

Appeal against surrender order.

38.(1) If the magistrates' court orders a person's surrender under this Act, the person may appeal to the Supreme Court against the order.

(2) But subsection (1) does not apply if the order is made under section 11.

(3) An appeal under this section may be brought on a question of law or fact.

(4) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 7 days starting with the day on which the order is made.

Court's powers on appeal under section 38.

39.(1) On an appeal under section 38 the Supreme Court may—

- (a) allow the appeal; or
- (b) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that—

- (a) the magistrates' court ought to have decided a question before it at the surrender hearing differently; or
- (b) if the court had decided the question in the way it ought to have done, the court would have been required to order the person's discharge.

(4) The conditions are that—

- (a) an issue is raised that was not raised at the surrender hearing or evidence is available that was not available at the surrender hearing;
- (b) the issue or evidence would have resulted in the magistrates' court deciding a question before the court differently; or
- (c) if the court had decided the question in that way, it would have been required to order the person's discharge.

(5) If the Supreme Court allows the appeal it must—

- (a) order the person's discharge; and
- (b) quash the order for his surrender.

Appeal against discharge at surrender hearing.

40.(1) If the magistrates' court orders a person's discharge at the surrender hearing the authority which issued the Extradition arrest warrant may appeal to the Supreme Court against the relevant decision.

(2) But subsection (1) does not apply if the order for the person's discharge was under section 34(2).

(3) The relevant decision is the decision which resulted in the order for the person's discharge.

(4) An appeal under this section may be brought on a question of law or fact.

(5) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 7 days starting with the day on which the order for the person's discharge is made.

Court's powers on appeal under section 40

41.(1) On an appeal under section 40 the Supreme Court may–

- (a) allow the appeal; or
- (b) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that–

- (a) the magistrates' court ought to have decided the relevant question differently;
- (b) if the court had decided the question in the way the court ought to have done, the court would not have been required to order the person's discharge.

(4) The conditions are that–

- (a) an issue is raised that was not raised at the surrender hearing or evidence is available that was not available at that hearing;
- (b) the issue or evidence would have resulted in the magistrates' court deciding the relevant question differently;
- (c) if the court had decided the question in that way, the court would not have been required to order the person's discharge.

(5) If the Supreme Court allows the appeal it must–

- (a) quash the order discharging the person;

- (b) remit the case to the magistrates' court; or
 - (c) direct the magistrates' court to proceed as it would have been required to do if the court had decided the relevant question differently at the surrender hearing.
- (6) A question is the relevant question if the magistrates' court's decision on it resulted in the order for the person's discharge.

Detention pending conclusion of appeal under section 40.

42.(1) This section applies if immediately after the magistrates' court orders the person's discharge the court is informed by the issuing authority that it intends to appeal under section 40.

- (2) The magistrates' court must remand the person in custody or on bail while the appeal is pending.
- (3) If the court remands the person in custody he may later grant bail.
- (4) An appeal under section 40 ceases to be pending at the earliest of these times—
 - (a) when the proceedings on the appeal are discontinued;
 - (b) when the Supreme Court dismisses the appeal, if the authority does not immediately inform the court that it intends to apply for leave to appeal to the Privy Council;
 - (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Privy Council against the decision of the Supreme Court on the appeal is granted; or
 - (d) when there is no further step that can be taken by the issuing authority in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).

Appeal to Supreme Court: time limit for start of hearing.

43.(1) Rules of court must prescribe the period (the relevant period) within which the Supreme Court must begin to hear an appeal under section 38 or 40.

- (2) Rules of court must provide for the relevant period to start with the date on which the person in respect of whom an Extradition arrest warrant is issued was arrested under the Extradition arrest warrant.

- (3) The Supreme Court must begin to hear the appeal before the end of the relevant period.
- (4) The Supreme Court may extend the relevant period if it believes it to be in the interests of justice to do so; and this subsection may apply more than once.
- (5) The power in subsection (4) may be exercised even after the end of the relevant period.

Appeal to Privy Council.

44.(1) An appeal lies to the Privy Council from a decision of the Supreme Court on an appeal under section 38 or 40.

- (2) An appeal under this section lies at the instance of—
 - (a) the person in respect of whom the Extradition arrest warrant was issued; and
 - (b) the issuing authority.
- (3) An appeal under this section lies only with the leave of the Supreme Court or the Privy Council.
- (4) Leave to appeal under this section must not be granted unless—
 - (a) the Supreme Court has certified that there is a point of law of general public importance involved in the decision; and
 - (b) it appears to the court granting leave that the point is one which ought to be considered by the Privy Council.
- (5) An application to the Supreme Court for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the court makes its decision on the appeal to it.
- (6) An application to the Privy Council for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the Supreme Court refuses leave to appeal.
- (7) If leave to appeal under this section is granted, the notice of appeal must be filed before the end of the permitted period, which is 28 days starting with the day on which leave is granted.
- (8) If subsection (7) is not complied with—

- (a) the notice of appeal must be taken to have been filed; and
 - (b) the appeal must be taken to have been dismissed by the Privy Council immediately after the end of the period permitted under that subsection.
- (9) These must be ignored for the purposes of subsection (8)(b)–
- (a) any power of a court to extend the period permitted for bringing the appeal;
 - (b) any power of a court to grant leave to take a step out of time.
- (10) The Supreme Court may grant bail to a person appealing under this section or applying for leave to appeal under this section.

Powers of Privy Council on appeal under section 44.

- 45.(1) On an appeal under section 44 the Privy Council may–
- (a) allow the appeal; or
 - (b) dismiss the appeal.
- (2) Subsection (3) applies if–
- (a) the person in respect of whom the Extradition arrest warrant was issued brings an appeal under section 44, and
 - (b) the Privy Council allows the appeal.
- (3) The Privy Council must–
- (a) order the person's discharge;
 - (b) quash the order for his surrender, if the appeal was against a decision of the Supreme Court to dismiss an appeal under section 38.
- (4) Subsection (5) applies if–
- (a) the Supreme Court allows an appeal under section 38 by the person in respect of whom the Extradition arrest warrant was issued,
 - (b) the issuing authority brings an appeal under section 44 against the decision of the Supreme Court, and

- (c) the Privy Council allows the appeal.
- (5) The Privy Council must–
- (a) quash the order of the Supreme Court under section 39(5) discharging the person;
 - (b) order the person to be surrendered to the State in which the warrant was issued.
- (6) Subsections (7) and (8) apply if–
- (a) the Supreme Court dismisses an appeal under section 40 against a decision made by the judge at the surrender hearing;
 - (b) the authority which issued the Extradition arrest warrant brings an appeal under section 44 against the decision of the Supreme Court; and
 - (c) the Privy Council allows the appeal.
- (7) If the magistrates’ court would have been required to order the person in respect of whom the warrant was issued to be surrendered had the court decided the relevant question differently, the Privy Council must–
- (a) quash the order of the judge discharging the person;
 - (b) order the person to be surrendered to the State in which the warrant was issued.
- (8) In any other case, the Privy Council must–
- (a) quash the order of the magistrates’ court discharging the person in respect of whom the warrant was issued;
 - (b) remit the case to the magistrates’ court;
 - (c) direct the court to proceed as it would have been required to do if it had decided the relevant question differently at the surrender hearing.
- (9) A question is the relevant question if the magistrates’ court’s decision on it resulted in the order for the person’s discharge.

Appeals: general.

46. A decision of the magistrates’ court under this Act may be questioned in legal proceedings only by means of an appeal under this Part.

Surrender where no appeal.

47.(1) This section applies if–

- (a) the magistrates' court orders a person's surrender to a State, and
- (b) no notice of an appeal under section 38 is given before the end of the period permitted under that section.

(2) But this section does not apply if the order is made under section 11.

(3) The person must be surrendered to the State before the end of the required period.

(4) The required period is–

- (a) 10 days starting with the day on which the magistrates' court makes the order, or
- (b) if the court and the issuing authority agree a later date, 10 days starting with the later date.

(5) If subsection (3) is not complied with and the person applies to the magistrates' court to be discharged the court must order his discharge, unless reasonable cause is shown for the delay.

(6) These must be ignored for the purposes of subsection (1)(b)–

- (a) any power of a court to extend the period permitted for giving notice of appeal;
- (b) any power of a court to grant leave to take a step out of time.

Surrender following appeal.

48.(1) This section applies if–

- (a) there is an appeal to the Supreme Court under section 38 against an order for a person's surrender to a State; and
- (b) the effect of the decision of the relevant court on the appeal is that the person is to be surrendered there.

(2) The person must be surrendered to the State before the end of the required period.

(3) The required period is–

- (a) 10 days starting with the day on which the decision of the relevant court on the appeal becomes final or proceedings on the appeal are discontinued; or
 - (b) if the relevant court and the issuing authority agree a later date, 10 days starting with the later date.
- (4) The relevant court is–
 - (a) the Supreme Court, if there is no appeal to the Privy Council against the decision of the Supreme Court on the appeal;
 - (b) the Privy Council, if there is such an appeal.
- (5) The decision of the Supreme Court on the appeal becomes final–
 - (a) when the period permitted for applying to the Supreme Court for leave to appeal to the Privy Council ends, if there is no such application;
 - (b) when the period permitted for applying to the Privy Council for leave to appeal to it ends, if the Supreme Court refuses leave to appeal and there is no application to the Privy Council for leave to appeal;
 - (c) when the Privy Council refuses leave to appeal to it;
 - (d) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Privy Council is granted, if no such appeal is brought before the end of that period.
- (6) These must be ignored for the purposes of subsection (5)–
 - (a) any power of a court to extend the period permitted for applying for leave to appeal;
 - (b) any power of a court to grant leave to take a step out of time.
- (7) The decision of the Privy Council on the appeal becomes final when it is made.
- (8) If subsection (2) is not complied with and the person applies to the magistrates' court to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay.

PART 5

COSTS ORDERS

Costs where extradition ordered.

49.(1) This section applies if any of the following occurs in relation to a person in respect of whom an Extradition arrest warrant is issued—

- (a) an order for the person's surrender is made under this Act;
- (b) the Supreme Court dismisses an appeal under section 38;
- (c) the Supreme Court or the Privy Council dismisses an application for leave to appeal to the Privy Council under section 45, if the application is made by the person;
- (d) the Privy Council dismisses an appeal under section 44, if the appeal is brought by the person.

(2) In a case falling within subsection (1)(a), the magistrates' court may make such order as it considers just and reasonable with regard to the costs to be paid by the person.

(3) In a case falling within subsection (1)(b), (c) or (d), the court by which the application or appeal is dismissed may make such order as it considers just and reasonable with regard to the costs to be paid by the person.

(4) An order for costs under this section—

- (a) must specify their amount;
- (b) may name the person to whom they are to be paid.

Costs where discharge ordered.

50.(1) This section applies if any of the following occurs in relation to a person in respect of whom an Extradition arrest warrant is issued—

- (a) an order for the person's discharge is made;
- (b) the person is taken to be discharged;
- (c) the Supreme Court dismisses an appeal under section 40;

- (d) the Supreme Court or the Privy Council dismisses an application for leave to appeal to the Privy Council under section 44, if the application is made by the authority which issued the warrant;
 - (e) the Privy Council dismisses an appeal under section 44, if the appeal is brought by the authority which issued the warrant.
- (2) In a case falling within subsection (1)(a), an order under subsection (5) in favour of the person may be made by–
- (a) the magistrates' court, if the order for the person's discharge is made by that court;
 - (b) the Supreme Court, if the order for the person's discharge is made by it;
 - (c) the Privy Council, if the order for the person's discharge is made by it.
- (3) In a case falling within subsection (1)(b), the magistrates' court may make an order under subsection (5) in favour of the person.
- (4) In a case falling within subsection (1)(c), (d) or (e), the court by which the application or appeal is dismissed may make an order under subsection (5) in favour of the person.
- (5) An order under this subsection in favour of a person is an order for a payment of the appropriate amount to be made to the person out of the Consolidated Fund.
- (6) The appropriate amount is such amount as the court making the order under subsection (5) considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by him in the proceedings.
- (7) But if the court making an order under subsection (5) is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in subsection (6), the court must–
- (a) assess what amount would in his or its opinion be just and reasonable;
 - (b) specify that amount in the order as the appropriate amount.
- (8) Unless subsection (7) applies, the appropriate amount–
- (a) must be specified in the order, if the court considers it appropriate for it to be so specified and the person in whose favour the order is made agrees the amount;
 - (b) must be determined in accordance with regulations made by the Chief Minister for the purposes of this section, in any other case.

Costs where discharge ordered: supplementary.

51.(1) The Chief Minister may make regulations for carrying this Part into effect and the regulations may, in particular, make provision as to—

- (a) the scales and rates of payments of any costs payable out of the Consolidated Fund in pursuance of any costs order, the circumstances in which and conditions under which such costs may be allowed and paid and the expenses which may be included in such costs; and
- (b) the review, as respects costs payable out of the Consolidated Fund in pursuance of any costs order, of any decision on taxation, or determination of the amount, of the costs,

and any provision made under this Part enabling any sum to be paid out of the Consolidated Fund shall have effect subject to any such regulations.

(2) The Chief Minister may, by regulations, make provision for the recovery of sums paid out of the Consolidated Fund in cases where—

- (a) a costs order has been made against a person; and
- (b) the person in whose favour the order was made is legally assisted, or is a person in whose favour a costs order is made.

**PART 6
EXPENSES OF EXECUTION**

Expenses incurred in relation to an Extradition arrest warrant.

52.(1) Expenses incurred in Gibraltar in relation to the execution of an Extradition arrest warrant in Gibraltar may not be claimed from the requesting State.

(2) The Government shall not be liable for expenses incurred in a State in relation to that State's execution of an Extradition arrest warrant issued under this Act.

(3) Expenses falling outside the matters referred to in subsections (1) and (2) shall be borne by the authorities issuing the Extradition arrest warrant.

SCHEDULE 1

Section 36

FORM OF EXTRADITION ARREST WARRANT

EXTRADITION ARREST WARRANT ⁽¹⁾

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

⁽¹⁾This warrant must be written in, or translated into, one of the official languages of the executing State, when that State is known, or any other language accepted by that State.

(a) Information regarding the identity of the requested person:.....

Name:.....

Forename(s):.....

Maiden name, where applicable:

Aliases, where applicable:.....

Sex:.....

Nationality:.....

Date of birth:.....

Place of birth:.....

Residence and/or known address:

Language(s) which the requested person understands (if known):

.....

Distinctive marks/description of the requested person:

.....

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:.....

Type:.....

2. Enforceable judgement:.....

.....

Reference:.....
.....

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):

.....
.....
.....

2. Length of the custodial sentence or detention order imposed:

.....
.....

Remaining sentence to be served:

.....
.....
.....

(d) Indicate if the person appeared in person at the trial resulting in the decision:

1. ☐ Yes, the person appeared in person at the trial resulting in the decision.

2. ☐ No, the person did not appear in person at the trial resulting in the decision.

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

☐ 3.1a. the person was summoned in person on.....(day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

☐ 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial.

OR

☐ 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

☐ 3.3. the person was served with the decision on (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

☐ the person expressly stated that he or she does not contest this decision,

OR

☐ the person did not request a retrial or appeal within the applicable time frame;

OR

☐ 3.4. the person was not personally served with the decision, but
- the person will be personally served with this decision without delay after the surrender, and

- when served with the decision, the person will be expressly informed of his or her right to retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

- the person will be informed of the time frame within which he or she has to request a retrial or appeal, which will be days.

4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above please provide information about how the relevant condition has been met:

.....
.....
.....
.....
.....

(e) Offences:

This warrant relates to in total: offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

.....
.....
.....
.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

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.....
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.....
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.....
.....

I. If applicable, tick one or more of the following offences punishable in the issuing State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing State:

- ☐ participation in a criminal organisation;
- ☐ terrorism;
- ☐ trafficking in human beings;
- ☐ sexual exploitation of children and child pornography;
- ☐ illicit trafficking in narcotic drugs and psychotropic substances;
- ☐ illicit trafficking in weapons, munitions and explosives;
- ☐ corruption;
- ☐ Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;
- ☐ laundering of the proceeds of crime;
- ☐ counterfeiting of currency, including the euro;
- ☐ computer-related crime;
- ☐ Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- ☐ facilitation of unauthorised entry and residence;
- ☐ murder, grievous bodily injury;
- ☐ illicit trade in human organs and tissue;

- ☐ kidnapping, illegal restraint and hostage-taking;
- ☐ racism and xenophobia;
- ☐ organised or armed robbery;
- ☐ illicit trafficking in cultural goods, including antiques and works of art;
- ☐ swindling;
- ☐ racketeering and extortion;
- ☐ counterfeiting and piracy of products;
- ☐ forgery of administrative documents and trafficking therein;
- ☐ forgery of means of payment;
- ☐ illicit trafficking in hormonal substances and other growth promoters;
- ☐ illicit trafficking in nuclear or radioactive materials;
- ☐ trafficking in stolen vehicles;
- ☐ rape;
- ☐ arson;
- ☐ crimes within the jurisdiction of the International Criminal Court;
- ☐ unlawful seizure of aircraft/ships;
- ☐ sabotage;

II. Full description of offence(s) not covered by section I above:

.....

(f) Other circumstances relevant to the case (optional information):
 (NB: This could cover remarks on extraterritoriality, interruption of periods
 of time limitation and other consequences of the offence)

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.....
.....
.....
.....

(g) This warrant pertains also to the seizure and handling over of property which may be

required as evidence:

This warrant pertains also to the seizure and handling over of property acquired by the

Requested person as a result of the offence:

Description of the property (and location) (if known):

.....
.....
.....
.....

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

- the legal system of the issuing State allows for a review of the penalty or measure imposed – on request or at least after 20 years – aiming at a non-execution of such penalty or measure,

and/or

- the legal system of the issuing State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing State, aiming at non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:

Official name:

Name of its representative ⁽¹⁾.....

.....

Post held (title/grade):.....

.....

File reference:.....

Address:.....

.....

Tel: (country code) (area/city code) (...)

Fax (country code) (area/city code) (...)

E-mail:.....

Contact details of the person to contact to make necessary practical arrangements for the surrender:

.....

--

⁽¹⁾ In the different language versions a reference to the “holder” of the judicial authority will be included.

Where a central authority has been made responsible for the transmission and administrative reception of Extradition arrest warrants:

Name of the central authority:

.....

Contact person, if applicable (title/grade and name):

.....

Address:.....

.....

Tel: (country code) (area/city code) (...)

Fax (country code) (area/city code) (...)

E-mail:

Signature of the issuing judicial authority and/or its representative:

.....

Name:.....

Post held (title/grade):.....

Date:.....

Official stamp (if available)

SCHEDULE 2

Section 36

OFFENCES REFERRED TO IN SECTION 27(1)(b)

The following offences, if they are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing State, shall give rise to surrender pursuant to an Extradition arrest warrant:

- (a) participation in a criminal organisation,
- (b) terrorism,
- (c) trafficking in human beings,
- (d) sexual exploitation of children and child pornography,
- (e) illicit trafficking in narcotic drugs and psychotropic substances,
- (f) illicit trafficking in weapons, munitions and explosives,
- (g) corruption,
- (h) fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- (i) laundering of the proceeds of crime,
- (j) counterfeiting currency, including of the Euro,
- (k) computer-related crime,
- (l) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- (m) facilitation of unauthorised entry and residence,
- (n) murder, grievous bodily injury,
- (o) illicit trade in human organs and tissue,
- (p) kidnapping, illegal restraint and hostage-taking,

- (q) racism and xenophobia,
- (r) organised or armed robbery,
- (s) illicit trafficking in cultural goods, including antiques and works of art,
- (t) swindling,
- (u) racketeering and extortion,
- (v) counterfeiting and piracy of products,
- (w) forgery of administrative documents and trafficking therein,
- (x) forgery of means of payment,
- (y) illicit trafficking in hormonal substances and other growth promoters,
- (z) illicit trafficking in nuclear or radioactive materials,
- (aa) trafficking in stolen vehicles,
- (ab) rape,
- (ac) arson,
- (ad) crimes within the jurisdiction of the International Criminal Court,
- (ae) unlawful seizure of aircraft/ships,
- (af) sabotage.

SCHEDULE 3**Section 9B****Indicative model Letter of Rights for persons arrested on the basis of an Extradition Arrest Warrant**

NOTE: The sole purpose of this model is to assist the Central Authority in Gibraltar in drawing up a Letter of Rights for use in Gibraltar. The Central Authority in Gibraltar is not bound to use this model and may amend this model in order to align it with the laws of Gibraltar and add further useful information.

You have been arrested on the basis of an Extradition Arrest Warrant.
You have the following rights:

A. INFORMATION ABOUT THE EXTRADITION ARREST WARRANT

You have the right to be informed about the content of the Extradition Arrest Warrant on the basis of which you have been arrested.

B. ASSISTANCE OF A LAWYER

You have the right to speak confidentially to a lawyer. A lawyer is independent from the police. Ask the police if you need help to get in contact with a lawyer, the police shall help you. Ask the police for more information.

C. INTERPRETATION AND TRANSLATION

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to a translation of the Extradition Arrest Warrant in a language you understand. You may in some circumstances be provided with an oral translation or summary.

D. POSSIBILITY TO CONSENT

You may consent or not consent to being surrendered to the State seeking you. Your consent would speed up the proceedings. It may be difficult or even impossible to change this decision at a later stage. Ask the authorities or your lawyer for more information.

E. HEARING

If you do not consent to your surrender, you have the right to be heard by a court.

2004-04

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