

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3521 of 9th March, 2006

B. 05/06

BILL

FOR

AN ORDINANCE to make provision for the implementation of the United Nations Convention Against Transnational Organised Crime.

**Part I
Preliminary**

Title.

1. This Ordinance may be cited as the Transnational Organised Crime Ordinance 2006.

Interpretation.

2. In this Ordinance—

“Convention” means the United Nations Convention against Transnational Organised Crime;

“relevant offence” means an offence that is punishable in Gibraltar by imprisonment for a term of four years or more;

“State” means Gibraltar, or a State that has ratified the Convention or a Territory covered by such a ratification.

Requests for assistance: procedure.

3.(1) Where a State makes a request for assistance under the provisions of this Ordinance the Chief Secretary must—

- (a) be satisfied that the State making the request (“the requesting State”) has ratified the Convention; and
- (b) be satisfied that the requesting State would reciprocate in respect of a request issued from Gibraltar.

(2) Where the Chief Secretary certifies that the provisions of subsection (1)(a) and (b) are satisfied he shall direct that the request be proceeded with.

Application: relevant offences.

4.(1) This Ordinance applies where a relevant offence is committed that is transnational in nature.

(2) An offence is transnational in nature when either—

- (a) it is committed in more than one State;
- (b) it is committed in one State but a substantial part of the preparation, planning, direction or control occurs in another State;
- (c) it is committed in one State but has substantial effects in another State.

Jurisdiction.

5. A court in Gibraltar shall have jurisdiction to hear any matter to which section 4 applies where the offence was committed in Gibraltar or, if the offence was committed outside Gibraltar, it has an effect in Gibraltar.

**PART II
Extradition**

Application of Fugitive Offenders Ordinance 2002.

6.(1) Subject to the subsection (2), the Fugitive Offenders Ordinance 2002 shall apply subject to the following—

- (a) a reference to a relevant offence in the Fugitive Offenders Ordinance 2002 means a relevant offence under this Ordinance; and

- (b) a reference in the Fugitive Offenders Ordinance 2002 to the United Kingdom, the Republic of Ireland, Commonwealth Countries, or United Kingdom Dependencies shall be taken to be a reference to a State, as defined in this Ordinance.

(2) Where any inconsistency arises the court shall interpret the Fugitive Offenders Ordinance 2002 with such modifications as are necessary to give effect to the Convention.

(3) Sections 2 and 4 of and the Schedule to the Fugitive Offenders Ordinance 2002 shall not apply to offences under this Ordinance.

Extradition under other enactments.

7. The provisions of this Part are not to be construed as imposing a limitation on any proceedings instituted under—

- (a) the Fugitive Offenders Ordinance 2002;
- (b) the European Arrest Warrant Ordinance 2004;
- (c) any other enactment,

and which are not originated under this Ordinance.

**PART III
Mutual Legal Assistance**

Application of the Mutual Legal Assistance (International) Ordinance 2005.

8. Where in relation to a relevant offence a request for assistance is received or is to be made by a State under this Ordinance, the provisions of the Mutual Legal Assistance (International) Ordinance 2005 shall apply as if that State were listed in Schedule 2 of that Ordinance.

External confiscation orders.

9.(1) Where a court in a State has made a confiscation order in respect of a relevant offence—

- (a) a court in Gibraltar shall proceed as if that State were a designated State under section 42 of the Criminal Justice Ordinance 1995; or
- (b) a court in Gibraltar shall proceed as if that State were a designated State under paragraph 3(1) of the Drug Trafficking Offences Ordinance 1995 (Designated Countries and Territories) Order 1999.

(2) Subsection (1) shall not apply if the court is satisfied that the confiscation order relates to an offence that is not covered by the Convention.

PART IV Miscellaneous

Corruption.

10. In any investigation or proceedings for a relevant offence to which Part XIX (Corruption) of the Criminal Offences Ordinance is to be applied, a reference to the Crown or the Government of Gibraltar shall where the context so admits be deemed to be a reference to the equivalent sovereign power or governing authority or government of that State.

Television link evidence.

11.(1) In proceedings instituted under this Ordinance, a person other than the accused may give evidence through a live television link if-

- (a) that person is outside Gibraltar;
- (b) an application under subsection (2) for the issue of a letter of request has been granted; and
- (c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that person.

(2) The prosecution or the defence in any proceedings referred to in subsection (1) may apply to a judge for the issue of a letter of request to-

- (a) a court or tribunal exercising jurisdiction in a country or territory outside Gibraltar where a prospective witness is ordinarily resident; or

- (b) any authority which the judge is satisfied is recognised by the government of that country or territory as the appropriate authority for receiving requests for assistance in facilitating the giving of evidence through a live television link,

requesting assistance in facilitating the giving of evidence by that prospective witness through a live television link.

(3) An application under subsection (2) shall be granted only if the judge is satisfied that—

- (a) the evidence which it is averred the prospective witness is able to give is necessary for the proper adjudication of the trial;
- (b) the prospective witness has been intimidated or fears intimidation if he travels to Gibraltar for the purpose of giving evidence; and
- (c) the grant of the application—
 - (i) is in the interests of justice; and
 - (ii) in the case of an application by the prosecution, is not unfair to the accused.

Protection of Witnesses.

12. In any proceedings instituted in Gibraltar under this Ordinance the Commissioner of Police may take such steps as he deems necessary for the protection of a witness in those proceedings.

Controlled delivery.

13.(1) In any investigation in relation to a relevant offence, the Commissioner of Police or the Collector of Customs may by written authority instruct their officers to allow the passage of a consignment that is or is reasonably believed to contain illegal contents where—

- (a) to do so will assist the identification of persons involved in the commission of a relevant offence whether in Gibraltar or elsewhere; and

- (b) the competent authority of the next State of transit has been notified and accepts responsibility for the monitoring of the consignment, or if it is the State of destination of the consignment, will undertake the necessary surveillance up to and including the delivery of the consignment.

(2) In any investigation in relation to a relevant offence where Gibraltar is the destination of a consignment that is or is reasonably believed to contain illegal contents, the Commissioner of Police or the Collector of Customs may by written authority instruct their officers to allow the delivery of the consignment when to do so will assist the identification of persons involved in the commission of a relevant offence whether in Gibraltar or elsewhere.

Liability of corporate bodies.

14.(1) Subsection (2) applies to proceedings in relation to a relevant offence where the enactment under which proceedings are to be instituted makes no separate provision for the liability of the officers of the body corporate.

(2) Where a body corporate is guilty of a relevant offence and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Rules of Court.

15. The Chief Justice may by rules of court make provision for the practice and procedure to be followed in connection with proceedings under this Ordinance.

Regulations.

16. The Government may make regulations in respect of any matter that arises from or is incidental to this Ordinance or the implementation of the Convention or any other relevant international obligation

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