

**EUROPEAN ARREST WARRANT ACT 2004****Principal Act**

<b>Act. No. 2004-04</b>	<i>Commencement</i>	28.1.2004
	<i>Assent</i>	28.1.2004
Amending enactments	Relevant current provisions	Commencement date
Act. 2009-49	ss. 7(3), 8(11), 9A, 10 & 10(b), 11(2) & (4)(a), 12(2)(a) & (3)(a), 15(1)(a) & (b), (1A), (4)(c), (5) & (6), 16(1)(b), (1A), (2)(b) & (2A), 17(1), (1A), (2) & (3), 25A, 25B, 43(6) & (7), 44(7) & (8)(a)	3.12.2009
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**Transposing:**

Directive 2012/13/EU

**EU Legislation/International Agreements involved:**

Framework Decision 2009/299/JHA

Framework Decision 2002/584/JHA

**English sources:**

None cited

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**2004-04**

# European Arrest Warrant

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

## **SCHEDULE 3**

Indicative model Letter of Rights for persons arrested on the basis of a  
European Arrest Warrant

AN ACT TO GIVE EFFECT TO COUNCIL FRAMEWORK DECISION OF 13 JUNE 2002 ON THE EUROPEAN ARREST WARRANT AND THE SURRENDER PROCEDURES BETWEEN MEMBER STATES AND MATTERS CONNECTED THEREWITH; AND TO MAKE SIMILAR ARRANGEMENTS AS BETWEEN GIBRALTAR AND THE UNITED KINGDOM.

## PART 1

### PRELIMINARY AND GENERAL

#### **Title.**

1. This Act may be cited as the European 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;

“European 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 the Framework Decision in that State, 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;

“European Communities” has the same meaning as it has in the European Communities Act;

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

“Framework Decision” means Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States;

“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 a European arrest warrant, the judicial authority in the issuing State that issued the European arrest warrant concerned;

“issuing State” means, in relation to a European arrest warrant, a State (a judicial authority of which has issued a European 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 Member State of the European Communities other than the United Kingdom; and
- (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) Subject to subsections (2) and (3), 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) In relation to a European arrest warrant issued in Gibraltar to be executed by a judicial authority in the Republic of Austria or the Italian Republic, this Act shall apply to offences committed or alleged to have been committed on or after 12 August 2002 only.

(3) In relation to a European arrest warrant issued in Gibraltar to be executed by a judicial authority in the French Republic, this Act shall apply to offences committed or alleged to have been committed on or after 1 November 1993 only.

### **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.

## **PART 2**

### **EUROPEAN ARREST WARRANT**

#### **CHAPTER 1**

#### **European arrest warrant Received in Gibraltar.**

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

- (a) against whom that State intends to bring proceedings for the offence to which the European arrest warrant relates; or
- (b) on whom a sentence of imprisonment or detention has been imposed and who fled from the issuing State before he—
  - (i) commenced serving that sentence; or
  - (ii) completed serving that sentence,

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) A European arrest warrant shall, in so far as is practicable, be in the form set out in Schedule 1 and shall specify—

- (a) the name and the nationality of the person in respect of whom it is issued;
- (b) the name, address of the principal office, fax number and e-mail address of the judicial authority that issued the European arrest warrant;
- (c) the offence to which the European arrest warrant relates including the nature and classification under the law of the issuing State of the offence concerned;
- (d) that 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; and
- (f)
  - (i) the penalties to which that person would, if convicted of the offence specified in the European arrest warrant, be liable;
  - (ii) where that person has been convicted of the offence specified in the European 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 European arrest warrant and a sentence has been imposed in respect thereof, the penalties of which that sentence consists.

(2) Where it is not practicable for the European arrest warrant to be in the form referred to in subsection (1), it shall include such information,

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additional to the information specified in subsection (1), as would be required to be provided were it in that form.

(3) Where a European arrest warrant is issued in the issuing state in respect of a person who has not been convicted of the offence specified therein, the European 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) A European arrest warrant shall be transmitted by, or on behalf of, the issuing judicial authority to the Central Authority in Gibraltar and, where the European arrest warrant is in a language other than the English language, a translation of the European arrest warrant into that language shall be so transmitted with the European 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 that language shall be so transmitted with the undertaking.

(3) A European 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.

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

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

are transmitted, in accordance with rules under subsection (10), by the issuing judicial authority to the Central Authority in Gibraltar by means of a facsimile machine in respect of which there is compliance with such rules.

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

- (a) such undertakings as are required under this Act; and

- (b) where appropriate, translations thereof,

are transmitted, in accordance with rules under subsection (10), by the issuing judicial authority to the Central Authority in Gibraltar by means of a facsimile machine in respect of which there is compliance with such rules.

(6) If the Central Authority in Gibraltar or the magistrates court is not satisfied that the facsimile copy of a document transmitted in accordance with this section corresponds to the document of which it purports to be a facsimile 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 that purports to be—

- (a) a European 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 a European 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 facsimile copy or true copy of a European arrest warrant, undertaking or

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translation referred to in subsection (8) shall, unless the contrary is shown, be evidence of the European arrest warrant, undertaking or translation concerned, as the case may be.

(10) The Chief Justice may, for the purposes of ensuring the accuracy of documents transmitted in accordance with subsection (4) or (5), make rules of court prescribing—

- (a) the procedures that shall be followed in connection with the transmission of documents in accordance with that sub-section; and
- (b) that such features as are specified in the rules shall be present in any equipment being used in that connection.

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

## **Applications by the Central Authority.**

9.(1) The Central Authority in Gibraltar shall, as soon as may be after it receives a European 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, a European 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. A copy of the warrant, the facsimile copy of the warrant or the true copy of the warrant shall 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 a European 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 a European arrest warrant has been or will be issued in respect of that person.

- (2) Where a person is arrested under this section—
  - (a) a European 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, a facsimile copy of the warrant or a true copy of the warrant, as soon as may be practicable after transmission of the European arrest warrant, be brought before the magistrates' court, which shall, if satisfied that that person is the person in respect of whom the European 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 a European 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 a European 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 a European arrest warrant shall, subject to section 9A(2), together with a copy of the warrant, a facsimile copy of the warrant or a true copy of the warrant, 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 European 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 that he has the 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 European arrest warrant, or a facsimile or true copy thereof, 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*

(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; 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.

(4) A person to whom an order for the time being in force under this section applies shall be surrendered to the issuing State concerned not later than 10 days after —

- (a) the making of the order; or
- (b) such date (being a date that falls after the expiration of that period) as may be agreed by the Central Authority in Gibraltar and the issuing State.

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

(6) Subsection (5) shall 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)

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- (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, upon such date as is fixed under section 10, 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 European arrest warrant, a facsimile copy of the warrant or a true copy of the warrant and, where appropriate, such undertakings or statements as are required under this Act, or facsimile copies or true copies thereof are provided to the court;
- (b) the magistrates' court is satisfied that the person before it is the person in respect of whom the European arrest warrant was issued;
- (c) the surrender of the person is not prohibited by Part 3; and
- (d) the European arrest warrant, or a facsimile or true copy thereof, 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.
  
- (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.
  
- (6) If the magistrates' court has not, after the expiration of 60 days from the arrest of the person concerned under section 9, made an order under this section or section 11, or has decided not to make an order under this section, it shall direct the Central Authority in Gibraltar to inform the issuing judicial authority of the reasons therefore specified in the direction, and the Central Authority shall comply with such direction.
  
- (7) If the magistrates' court has not, after the expiration of 90 days from the arrest of the person concerned under section 9, made an order under this section or section 11, or has decided not to make an order under this section, it shall direct the Central Authority to inform the issuing judicial of the

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reasons therefore specified in the direction, and the Central Authority in Gibraltar shall comply with such direction.

### **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 to it is not sufficient to enable it to perform its functions, require the issuing judicial authority to provide it with such additional documentation or information as it may specify, within such period as it may specify.

### **Request for additional information by the Central Authority.**

14. The Central Authority may, if of the opinion that the documentation or information provided to it under this Act is not sufficient to enable it or the magistrates' court to perform its functions, require the issuing judicial authority to provide it with such additional documentation or information as it may specify, within such period as it may specify.

### **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 a European 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 European 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 European 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 European 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 European 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 European arrest warrant concerned or an offence disclosed by the same facts as the

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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; 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 European arrest warrant concerned or an offence disclosed by the same facts as the offence specified in that warrant; or

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- (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 European 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 European 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—

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- (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.

## **Further conditions for 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 a European 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 a European 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 a European 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

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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 subsection (4).

(4)

- (a) An issuing judicial authority may request the Central Authority to consent to a person named in a European arrest warrant being surrendered by the issuing State concerned to another State pursuant to a European arrest warrant issued by a judicial authority in that other State in respect of that person.
- (b) Upon receipt of a request under paragraph (a) the Central Authority shall give its consent to the surrender of the person to the other State by the issuing State unless the surrender of the person in respect of the offence specified in the European arrest warrant issued by a judicial authority in that other State would, if that person's surrender were sought by that other State under this Act, be prohibited under Part 3.

### **Surrender subject to undertaking.**

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.

#### **Search and seizure powers.**

18. The Government may make regulations to provide for powers to authorise police officers to enter into premises and seize property in connection with the execution of a European arrest warrant.

#### **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

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- (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) Transit through Gibraltar of a person being conveyed from an executing State to an issuing State, upon his surrender pursuant to a European 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 nationality of the person and such other information as will enable the person to be identified by the Central Authority;
- (b) information showing that a European arrest warrant has been issued by the issuing State in respect of the person;
- (c) the nature and classification under the law of the issuing State of the offence to which the European arrest warrant relates; and
- (d) the circumstances in which the offence specified in the European arrest warrant was committed or is alleged to have been committed, including the date and place of its commission.

(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 Airport) and that is scheduled to land in a place (other than Gibraltar Airport) and on board which there is a person who is being conveyed to an issuing State upon his surrender pursuant to a European 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 a European 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 a European arrest warrant, a State (a judicial authority of which has ordered the arrest and surrender to the issuing State, pursuant to the European 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 European 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 European 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 European 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—

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- (a) the seriousness of the offences specified in the European arrest warrants concerned;
- (b) the places where the offences were committed or are alleged to have been committed;
- (c) the dates on which the European arrest warrants were issued; and
- (d) whether the European 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 a European 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 European 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 European 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 European 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 European arrest warrant was issued and the date on which the request for extradition was made; and

- (d) whether the European 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 a European 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 European 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.

## CHAPTER 2

### ISSUE OF EUROPEAN ARREST WARRANT BY THE GIBRALTAR AUTHORITIES

#### **Interpretation.**

23. In this Chapter "European 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 a European 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) A European arrest warrant shall, in so far as is practicable, be in the form set out in Schedule 1 and shall specify—

- (a) the name and the nationality of the person to whom it relates;
- (b) the name, address, fax number and e-mail address of the magistrates' court;
- (c) the offence to which the European 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) that 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 European arrest warrant would, if convicted of the offence to which the European arrest warrant relates, be liable;
  - (ii) where the person named in the European 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; and

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- (iii) where the person named in the European 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.

(3) Where it is not practicable for the European 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.

## **Imprisonment following surrender.**

25.(1) Where a person is surrendered to the Gibraltar authorities pursuant to a European 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 European 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 European arrest warrant.

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

## **Effects of the surrender (specialty).**

25A.(1) Subject to subsections (2) and (3), where a person is surrendered to the Gibraltar authorities pursuant to a European 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 European 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;
- (d) where the person consented to be surrendered and that person, where appropriate and at the appropriate time, renounced the specialty rule in accordance with the Framework decision;

- (e) where, after the surrender, the person expressly and voluntarily renounces entitlement to the specialty rule with regard to specific offences committed or alleged to have been committed by him before his surrender. Such renunciation may only be made before a court and shall be in a form that ensures that the person is aware of his right to professional legal advice and has had the opportunity to exercise such right;
- (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, upon an application made by or on behalf of the Attorney General, which includes the information required under section 24(2) and which relates to an offence, other than one specified in the European arrest warrant or an offence disclosed by the same facts as the offence specified in that warrant, which falls within the scope of this Act.

(3) Subsection (1) does not apply if the person surrendered could be liable to a penalty (other than a penalty consisting of the restriction of the person's liberty) including a financial penalty in respect of such offence 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 laws of Gibraltar be detained or otherwise deprived of his personal liberty.

**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 a European arrest warrant, that person shall not be—

- (a) surrendered to another State pursuant to a European 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—

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- (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 specialty rule with regard to specific offences committed or alleged to have been committed by him before his surrender. Such renunciation may only be made before a court and shall be in a form that ensures that the person is aware of his right to professional legal advice and has had the opportunity to exercise such right;
- (c) where the person is not subject to the specialty rule in accordance with section 25A(2)(d), (e) or (f).

## 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 European arrest warrant is an offence to which section 27(1)(b) applies); or
- (c) there are reasonable grounds for believing that—
  - (i) the European 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 European 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 European 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 European 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 European 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.

(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 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 European arrest warrant issued in respect of him; or
- (b) the Attorney General has decided not to bring, or to enter a nolle prosequi in, 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 European arrest warrant issued in respect of him, for reasons other than that a European arrest warrant has been issued in respect of that person.

**Exceptions to duty to surrender: where prosecution not possible in Gibraltar.**

32. A person shall not be surrendered under this Act if the offence specified in the European 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 European arrest warrant was issued could not be proceeded against by reason of his age.

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

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

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- (a) the offence specified in the European arrest warrant issued in respect of him was committed or is alleged to have been committed in whole or in part in Gibraltar; or
- (b) the offence specified in the European 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.

**Exceptions to duty to surrender: procedural matters.**

34.(1) A person shall not be surrendered under this Act if–

- (a) he was not present when he was tried for and convicted of the offence specified in the European arrest warrant; and
- (b)
  - (i) he was not notified of the time when, and place at which, he would be tried for the offence; or
  - (ii) he was not permitted to attend the trial in respect of the offence concerned;  
  
unless the issuing judicial authority gives an undertaking in writing that the person will, upon being surrendered–
  - (iii) be retried for that offence or be given the opportunity of a retrial in respect of that offence;
  - (iv) be notified of the time when, and place at which any retrial in respect of the offence concerned will take place; and
  - (v) be permitted to be present when any such retrial takes place.

(2) 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 a European arrest warrant issued in respect of a person has been withdrawn.

(3) The relevant period is the period–

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- (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.

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

(5) 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.**

35. 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.

**Schedule.**

36. The Schedules to this Act shall have effect.

**Consequential Amendments.**

37. The Fugitive Offenders Act 2002 shall be amended by deleting all references to the Republic of Ireland and the United Kingdom wherever they may appear.

**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 European 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—

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- (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 a European arrest warrant is issued was arrested under the European 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.

(6) *Deleted*

(7) *Deleted*

#### **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 European 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.

This version is out of date

(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 European 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 European 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 European 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–

This version is out of date

- (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 a European 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 a European 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.

This version is out of date

(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.

SCHEDULE 1

Section 36

FORM OF EUROPEAN ARREST WARRANT

EUROPEAN ARREST WARRANT<sup>(1)</sup>

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.

(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):.....  
.....

<sup>(1)</sup> 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.

European Arrest Warrant

This version is out of date

.....

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:.....

.....

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

(d) Decision rendered in absentia and:  
- the person concerned has been summoned in person or otherwise informed of the  
date and place of the hearing which led to the decision rendered in absentia,  
or  
- the person concerned has not been summoned in person or otherwise informed of  
the date and place of the hearing which led to the decision rendered in absentia but  
has the following legal guarantees after surrender (such guarantees can be given in  
advance)  
Specify the legal guarantees  
.....  
.....  
.....  
.....  
.....  
.....

European Arrest Warrant

This version is out of date

(c) 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:  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 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

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- 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;

European Arrest Warrant

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\_\_\_\_\_

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)*

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

(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 handing 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:

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- 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 practise 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<sup>(1)</sup>:.....  
 ....  
 .....

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:.....

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

European Arrest Warrant

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

Where a central authority has been made responsible for the transmission and administrative reception of European 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 a European 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 a European 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 a European Arrest Warrant.  
You have the following rights:

#### **A. INFORMATION ABOUT THE EUROPEAN ARREST WARRANT**

You have the right to be informed about the content of the European 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 European 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.