

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5323 GIBRALTAR Thursday 9th July 2026

LEGAL NOTICE NO. 171 OF 2026

TREATY ON GIBRALTAR AND THE EUROPEAN UNION ACT 2026

TGEU IMPLEMENTATION (SURRENDER) REGULATIONS 2026

In exercise of the powers conferred on the Government by section 13 of the Treaty on Gibraltar and the European Union Act 2026, and for the purposes of implementing Chapter 5 of Title V of Part Two of the Agreement in respect of Gibraltar entered into between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland, and for connected purposes, the Government has made these Regulations-

Title.

1. These Regulations may be cited as the TGEU Implementation (Surrender) Regulations 2026.

Commencement.

2. These Regulations come into operation on the Implementation Date.

Interpretation.

3. In these Regulations, unless the context otherwise requires-

“Article” has the same meaning as in section 3(1) of the Treaty on Gibraltar and the European Union Act 2026;

“Chapter” means a Chapter of the TGEU;

“Part” has the same meaning as in section 3(1) of the Treaty on Gibraltar and the European Union Act 2026;

“Title” has the same meaning as in section 3(1) of the Treaty on Gibraltar and the European Union Act 2026;

“the Treaty on Gibraltar and the European Union” (or “TGEU”) has the meaning given by section 5 of the Treaty on Gibraltar and the European Union Act 2026.

Purpose.

4. The purpose of these Regulations is to give effect to Articles 115 to 151 in Chapter 5 of Title V of Part Two of the TGEU.

Amendment of the Extradition Arrest Warrant Act 2004.

5.(1) The Extradition Arrest Warrant Act 2004 is amended in accordance with this regulation.

(2) For the long title, substitute “AN ACT TO GIVE EFFECT TO CHAPTER 5 OF TITLE V OF PART TWO OF THE AGREEMENT IN RESPECT OF GIBRALTAR BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND TO PROVIDE FOR THE CONTINUATION OF ARRANGEMENTS FOR THE EXTRADITION OF PERSONS BETWEEN GIBRALTAR AND THE UNITED KINGDOM AND MATTERS CONNECTED THERETO.”.

(3) In section 2, after “context otherwise requires” insert, “, or unless otherwise provided in Part 7”.

(4) After section 3(1) insert-

“(1A) Part 7 sets out the framework which shall apply as between all Member States, on the one hand, and Gibraltar, on the other, based on a mechanism of surrender under an arrest warrant in accordance with the TGEU.

(1B) The “Treaty on Gibraltar and the European Union” (or “TGEU”) has the meaning given by section 5 of the Treaty on Gibraltar and the European Union Act 2026.”.

(5) In sections 5 and 6 for “this Act”, substitute “Parts 2 to 6”.

(6) In section 8-

(a) in subsections (2), (3), (5)(a), for “Act”, substitute “Part”;

(b) in subsection (8)-

(i) for “this Act applies”, substitute “Parts 2 to 6 apply”;

(ii) in paragraphs (b) and (c), substitute “Act” for “Part”;

(iii) in subsection (9), substitute “this Act applies” for “Parts 2 to 6 apply”.

(7) In section 9B(1) for “this Act”, substitute “Parts 2 to 6”.

(8) In section 11, in subsections (1)(a) and (2B)(a), substitute “this Act” for “Parts 2 to 6”.

- (9) In section 12-
- (a) in subsection (2)(a), substitute “Act” for “Part”;
 - (b) in subsection (2)(d), substitute “this Act” for “Parts 2 to 6”.
- (10) In section 13, substitute “Act” for “Part”.
- (11) In section 15-
- (a) in subsections (1), (2), (3), (4), (5)(a), substitute “under this Act” for “for the purposes of Parts 2 to 6”;
 - (b) in subsection (6), substitute “this Act” for “Parts 2 to 6”.
- (12) In section 15A(2)(a), substitute “this Act” for “Parts 2 to 6”.
- (13) In section 16, in subsections (1), (2) and (3) substitute “under this Act” for “for the purposes of Parts 2 to 6”.
- (14) In section 17-
- (a) in subsection (1), for “under this Act” substitute “for the purposes of Parts 2 to 6”;
 - (b) in subsection (2), for “this Act” substitute “Parts 2 to 6”.
- (15) In section 18(2), for “under this Act” substitute “for the purposes of Parts 2 to 6”.
- (16) In section 19, for “this Act”, substitute “Parts 2 to 6”.
- (17) In section 22(1)(a) and (3) for “this Act” substitute “Parts 2 to 6”.
- (18) In section 22A, for “This Act” substitute “The provisions in Parts 2 to 6”.
- (19) In section 23, for “Act” substitute “Part”.
- (20) In section 26, for “A person shall not be surrendered under this Act if” substitute-
- “For the purposes of Parts 2 to 6, a person must not be surrendered if”.
- (21) In section 27, for “this Act” substitute “Parts 2 to 6”.
- (22) In section 28, in subsections (2) and (3), substitute “this Act” for “Parts 2 to 6”.
- (23) In section 29 for “under this Act” substitute “for the purposes of Parts 2 to 6”.
- (24) In section 30, in subsections (1) and (2), substitute “this Act” for “Parts 2 to 6”.
- (25) In section 31 substitute “this Act” for “Parts 2 to 6”.

- (26) In section 32 substitute “this Act” for “Parts 2 to 6”.
- (27) In section 33, in subsections (1) and (2), substitute “this Act” for “Parts 2 to 6”.
- (28) In section 33(AB)(6), substitute “this Act” for “Parts 2 to 6”.
- (29) In section 33A, substitute “this Act” for “Parts 2 to 6”.
- (30) In section 34A(2)(a), substitute “this Act” for “Part 2”.
- (31) In section 35(1), substitute “this Act” for “Parts 2 to 6”.
- (32) In section 38(1), substitute “this Act” for “Parts 2 to 4”.
- (33) In section 46, substitute “this Act” for “Parts 2 to 6”.
- (34) In section 49(1)(a), substitute “this Act” for “Parts 2 to 4”.
- (35) In section 52(2), substitute “this Act” for “Part 2”.
- (36) After Part 6 insert-

“PART 7

ARREST WARRANT UNDER TGEU

PRELIMINARY

Interpretation.

53.(1) In this Part-

“arrest warrant” means a warrant, order or decision of a judicial authority, issued under such laws as give effect to Articles 116 to 151, for the arrest and surrender of a requested person by Gibraltar, or by a Member State for the purposes of criminal proceedings or the execution of a custodial sentence or detention order;

“Annex” has the same meaning as in section 3(1) of the Treaty on Gibraltar and the European Union Act 2026;

“Article” has the same meaning as in section 3(1) of the Treaty on Gibraltar and the European Union Act 2026;

“British national” has the meaning given in subsection (2);

“central authority of a Member State” means a central authority or authorities designated by a Member State, as notified by the European Union in accordance with Article 124(1);

“Central Authority” has the same meaning as in section 63 of the Treaty on Gibraltar and the European Union Act 2026;

“executing judicial authority” means-

- (a) the judicial authority of the executing Member State which is competent to execute the arrest warrant by virtue of its domestic law; or
- (b) the judicial authority in Gibraltar, where it is the executing authority, which is competent to execute the arrest warrant under Gibraltar law;

“executing State” means, in relation to an arrest warrant, a Member State or Gibraltar which receives an arrest warrant;

“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;

“issuing judicial authority” means-

- (a) the judicial authority of the issuing Member State which is competent to issue an arrest warrant; or
- (b) in Gibraltar, the magistrates’ court that issued the warrant;

“issuing State” means the Member State, or Gibraltar whose judicial authority issued the arrest warrant;

“judicial authority” means-

- (a) in the case of a Member State, a judge, a court or a public prosecutor, to the extent provided for under its domestic law;
- (b) in the case of Gibraltar, the magistrates’ court;

“Part” has the same meaning as in section 3(1) of the Treaty on Gibraltar and the European Union Act 2026;

“Member State” has the same meaning as in section 3(3) of the Treaty on Gibraltar and the European Union Act 2026;

“Specialised Committee on Circulation of Persons” means the Specialised Committee on Circulation of Persons established under Article 23(1);

“Title” has the same meaning as in section 3(1) of the Treaty on Gibraltar and the European Union Act 2026; and

"third country" means a country other than a Member State or Gibraltar.

- (2) For the purposes of this Part, a “British national” refers to a person who is registered under the Gibraltarian Status Act.

Purpose of Part 7.

54. This Part gives effect to Articles 115 to 151 in Chapter 5 of Title V of Part Two of the TGEU.

Principle of proportionality.

- 55.(1) This section implements Article 116.

- (2) Cooperation through arrest warrants must be necessary and proportionate, taking into account;

- (a) the rights of the requested person;
- (b) the interests of the victims;

and having regard to the seriousness of the act, the likely penalty to be imposed and the availability of less coercive measures than the surrender of the requested person, particularly with a view to avoiding unnecessarily long periods of pre-trial detention.

Scope of Part 7.

- 56.(1) This section implements Article 118(1) to (3).

- (2) An arrest warrant may be issued for acts which are punishable under the law of the issuing State, and where—

- (a) the person would, if convicted, be liable to a term of imprisonment of 12 months or more; or
- (b) 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.

- (3) Without prejudice to subsection (4) and section 57, a person must not be surrendered to an issuing State unless the acts for which an arrest warrant is issued and transmitted to the Central Authority under section 61 constitute an offence

under Gibraltar law, whatever the elements of the offence are or however described under this law.

- (4) Subject to sections 70, 92, 93(2)(b) to (h), and 94, the Central Authority must not refuse to execute an arrest warrant where the act constituting the offence is punishable with imprisonment or detention for a term of 12 months or more, and concerns-

(a) any person who contributes to the commission by a group of persons acting with a common purpose of one or more offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, done at Strasbourg on 27 January 1977, or, illicit trafficking in narcotic drugs and psychotropic substances, or murder, grievous bodily injury, kidnapping, illegal restraint, hostage-taking or rape –

(i) even where the person concerned does not take part in the actual execution of the offence, or offences concerned; and

(ii) the contribution must be intentional, and made with the knowledge that the participation will contribute to the achievement of the group's criminal activities; or

(b) “terrorism” as defined in Annex 13.

Dual criminality and presumption of consent.

57.(1) This section implements Article 118(4).

- (2) In accordance with Article 118(4), on the basis of reciprocity, the condition of dual criminality in section 56(3) will not be applied, provided the offence on which an arrest warrant is based is-

(a) one of the offences listed in Article 118(5), as defined by the law of the issuing State;

(b) punishable in the issuing State by imprisonment or detention for a term of at least 3 years.

- (3) In accordance with Article 144(1), consent is presumed to have been given for the prosecution, sentencing or detention of a person with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to the person's surrender, other than that for which the person was surrendered, unless in a particular case the magistrates' court states otherwise in its decision on surrender.

CHAPTER 1

Arrest warrants issued in Gibraltar

Issue of warrant and further information.

- 58.(1) The magistrates' court may, upon an application made by or on behalf of the Attorney General, issue an 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 it is necessary and proportionate to issue an arrest warrant in accordance with Article 116; and
 - (c) where the arrest warrant satisfies the requirements under section 56.
- (2) In accordance with Article 132(2), the Central Authority may provide an executing State with additional information upon a request from that State, and any information must be provided as a matter of urgency, and within any time limit stipulated by the executing judicial authority, taking into consideration the need to observe time limits as provided under Article 134.

Content and form of arrest warrant.

- 59.(1) This section implements Article 125(1) and (2).
- (2) An arrest warrant issued under section 58 shall be in the form set out in Annex 14, as amended or modified under Article 125(2), and must specify—
- (a) the identity and the nationality of the requested person;
 - (b) the name, address, telephone number, fax number and email address of the issuing judicial authority;
 - (c) any evidence of a conviction, sentence, judgment or detention order that is immediately enforceable against the requested person, or that a warrant for their arrest or other enforceable decision having the same effect has been issued in respect of an offence which falls within the scope of Article 118;
 - (d) having particular regard to Article 118, the nature and classification of the offence to which the arrest warrant relates;

- (e) a description of 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 requested person in the commission of the offence;
- (f) the penalties and consequences, in particular-
 - (i) the prescribed scale of penalties under Gibraltar law to which that person would, if convicted of the offence specified in the arrest warrant, be subject;
 - (ii) where that person has been convicted of the offence specified in the arrest warrant but has not yet been sentenced, the penalties or the prescribed scale of penalties to which they are subject in respect of the offence;
 - (iii) where the person has been convicted of the offence specified in the arrest warrant, and there is a final judgment, the penalties imposed under that judgment; or
 - (iv) if possible, other consequences of the offence.

Language.

60.(1) This section implements Article 125(3).

- (2) An arrest warrant issued under section 58 must be translated into the official language or one of the official languages of an executing State.

Transmission of requests.

61.(1) This section implements Articles 126 and 127(2).

- (2) Subject to subsection (4), an initial transmission of an arrest warrant must be sent by the Central Authority to the central authority of a Member State in accordance with the arrangements set out in Article 6(1).
- (3) Communications other than those referred to in subsection (2) may be made directly between the Central Authority and the central authority of a Member State.
- (4) Where the location of the requested person is known, the magistrates' court may transmit the arrest warrant to the competent authorities in the executing State in accordance with Article 6(1).

Procedures for transmitting an arrest warrant.

62.(1) This section implements Article 127(1), (3) and (4).

- (2) Where the magistrates' court issues an arrest warrant under section 58 and does not know which authority is the competent executing judicial authority, the Central Authority must make the necessary enquiries to obtain that information from the authorities in the executing State.
- (3) Any difficulties concerning the transmission of the arrest warrant or the verification of the authenticity of a document required for the execution of an arrest warrant, shall be resolved through direct communication between the issuing judicial authority and executing judicial authority, and where appropriate the involvement of the Central Authority or the central authority of a Member State.
- (4) In lieu of the procedure in section 61(2), the magistrates' court may request that the International Criminal Police Organisation transmit the arrest warrant issued by the court to the executing State.

Person requested- trial in absentia.

63.(1) This section implements Article 120(2).

(2) Where-

- (a) an arrest warrant has been issued under section 58 for the purposes of executing a sentence of imprisonment or a detention order;
- (b) the requested person did not appear at the trial for which they received a sentence of a term of imprisonment or detention;
- (c) the requested person was not personally served with the sentence but-
 - (i) they will be personally served with the enforceable judgment without delay after the surrender, and will be expressly informed of their right to a retrial or appeal in which they have the right to participate and which allows the merits of the case including fresh evidence, to be re-examined, and which may lead to the original judgment being reversed; and
 - (ii) they will be informed of the time frame within which they have to request such a retrial or appeal, as mentioned in the arrest warrant;
- (d) the requested person has not previously received any information about the existence of criminal proceedings against them,

the requested person may, when informed about the content of the arrest warrant, request a copy of the enforceable judgment which must be provided to them by the magistrates' court.

- (3) A request under subsection (2) is for information purposes only and must not-

- (a) delay the surrender procedure;
- (b) delay the execution of the arrest warrant;
- (c) be regarded as formal service of the judgment, it shall be provided for information purposes only; and
- (d) affect any time limits applicable for requesting a retrial or appeal.

Person surrendered- review of detention.

64.(1) This section implements Article 120(3).

(2) Where-

- (a) a person is surrendered under the conditions in section 63(2)(a) and (b); and
- (b) that person has requested a retrial or appeal,

the detention of that person pending the retrial or appeal must, until those proceedings are concluded, be reviewed by the magistrates' court either on a regular basis or upon the request of the person concerned, and in conducting a review the court shall, in particular, consider the possibility of bail in accordance with the provisions in the Criminal Procedure and Evidence Act 2011, and the retrial or appeal must begin within due time after the person is surrendered.

Deduction of period of detention served in the executing State or in Gibraltar.

65.(1) This section implements Article 143.

- (2) Where a person is surrendered to the Gibraltar authorities pursuant to an arrest warrant issued under section 58, 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 in respect of the offence specified in that 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 arrest warrant.
- (3) All information concerning the duration of the detention of the requested person for the purposes of the arrest warrant must be transmitted by the executing judicial authority or the central authority of a Member State, to the magistrates' court at the time of surrender.

Possible prosecutions for other offences.

66. (1) This section implements Article 144(3) and (4).

- (2) Except where consent is presumed to have been given or where consent was given in accordance with Article 144(1) and (2), where a person is surrendered to the Gibraltar authorities pursuant to an arrest warrant, they shall not be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in their personal freedom, for an offence committed before their surrender other than the offence specified in the arrest warrant.
- (3) Subsection (2) 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 their 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) the criminal proceedings do not give rise to the application of a sentence involving a restriction of their personal liberty;
 - (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or measure in lieu thereof, even if the penalty or a measure may give rise to a restriction of their personal liberty;
 - (e) where the person consented to be surrendered and that person, where appropriate and at the appropriate time, renounced the ‘speciality rule’ in accordance with Article 130;
 - (f) where, after the surrender, the person expressly and voluntarily renounces entitlement to the ‘speciality rule’ with regard to specific offences committed or alleged to have been committed by them before their surrender;
 - (g) where the executing judicial authority which surrendered the person has given its consent.
- (4) Renunciation of the ‘speciality rule’ after surrender must be—
- (a) made voluntarily after having obtained, or having been given the opportunity of obtaining or being provided with professional legal advice of the consequences of renouncing the ‘speciality rule’; and
 - (b) made before the magistrates’ court; and
 - (c) recorded by the magistrates’ court.

- (5) If consent is required, the Central Authority may request consent from the executing judicial authority, and the consent must be –
 - (a) in writing and containing and being accompanied by the information referred to under Article 125(1); and
 - (b) if need be, accompanied by translation into the official language of the executing State or a language that the executing State has declared it will accept.

Surrender or subsequent extradition where the issuing State is Gibraltar.

67.(1) This section implements Article 145.

- (2) Where a person has been surrendered pursuant to an arrest warrant issued under section 58 or a European Arrest Warrant, that person may be subsequently surrendered to a Member State (other than the executing Member State) pursuant to an arrest warrant or a European Arrest Warrant, issued for any offence committed prior to that person's surrender to Gibraltar without the consent of the executing judicial authority in the following cases-
 - (a) when the person having been surrendered to Gibraltar and having had the opportunity to leave Gibraltar, has not done so within 45 days of their final discharge, or has returned to Gibraltar after leaving it;
 - (b) where the requested person consents to being surrendered to the other Member State pursuant to an arrest warrant or a European arrest warrant;
 - (c) where the requested person is not subject to the 'speciality rule' in accordance with Article 144(3)(a), (e), (f) or (g).
- (3) The consent of the requested person referred to in subsection (2)(b), must be–
 - (a) made before the magistrates' court;
 - (b) recorded by the magistrates' court;

and the person must –

- (i) give their consent voluntarily after having obtained, or having been given the opportunity of obtaining or being provided with, professional legal advice before consenting to their surrender; and
 - (ii) be aware of the consequences of their providing consent.
- (4) Where consent of the executing judicial authority is required, a request for consent may be sent to executing judicial authority in accordance with the following requirements-

- (a) the request must be submitted in accordance with arrangements under Article 6(1) with the details specified in section 59(2);
 - (b) the request must be accompanied by a translation into the official language or languages of the executing State.
- (5) A person surrendered to Gibraltar pursuant to an arrest warrant must not be extradited to a third country or surrendered to the United Kingdom, without the consent of the executing judicial authority which ordered the surrender of the person.
- (6) For the situations referred to in Article 123, the issuing State must give the guarantees provided for therein.

Handing over the property.

68.(1) This section implements Article 146.

- (2) Where the magistrates' court has issued an arrest warrant under section 58, it may request that the executing judicial authority seize and hand over property which—

- (a) may be required as evidence; or
- (b) has been acquired by the person named in the arrest warrant as a result of the offence,

notwithstanding that the surrender of the person cannot be carried out by reason of the death or escape from custody of the person.

- (3) Any person or authority duly authorised by the issuing State to receive it, may receive property which a Member State may hand over in accordance with Article 146(1).
- (4) If the property referred to in subsection (2) is liable to seizure or confiscation in the executing State, the authorities in that State may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the authorised person or authority in Gibraltar on the condition that it is returned on the terms and conditions to be agreed between the parties.
- (5) Any rights which the executing State or a third party may have in relation to property handed over in accordance with this section are preserved.
- (6) Where the rights referred to in subsection (5) exist, the authorised person or authority in Gibraltar must return property handed over under this section, without charge to the executing State, after the criminal proceedings are concluded.

CHAPTER 2

Arrest warrants received in Gibraltar

Arrest warrant received in Gibraltar.

- 69.(1) Where an issuing judicial authority issues an arrest warrant in respect of a person—
- (a) against whom an issuing State intends to bring proceedings for the offence to which the arrest warrant relates; or
 - (b) on whom a sentence of imprisonment or detention has been imposed in that issuing State,
- that person shall, subject to and in accordance with the provisions of this Part, be arrested and surrendered to the issuing State.
- (2) The arrest warrants must be transmitted to the Central Authority in accordance with the arrangements referred to in Article 6(1).
 - (3) Alternatively, an arrest warrant from an issuing State may be received from the International Criminal Police Organisation, and transmitted in accordance with Article 127(2).
 - (4) Communications other than those referred to in subsections (2) and (3) may be made directly between the Central Authority and the central authority of a Member State.
 - (5) An arrest warrant received under this section shall be dealt with and executed as a matter of urgency.
 - (6) The Central Authority may only accept an arrest warrant by, or on behalf of, the issuing judicial authority where the arrest warrant—
 - (a) complies with the requirements of Article 125(1); and
 - (b) is in English or is accompanied by a translation in English.
 - (7) Where the location of the requested person is known, the Central Authority may accept an arrest warrant transmitted in accordance with the arrangements set out in Article 6(1) for the purpose of establishing the authenticity of the arrest warrant.
 - (8) Where an authority in Gibraltar receives an arrest warrant which it is not competent to act upon, that authority must, without delay, forward the arrest warrant to the competent authority in Gibraltar, and shall notify the issuing judicial authority that it has done so.

- (9) Any difficulties concerning the transmission of the arrest warrant or the verification of the authenticity of a document required for the execution of an arrest warrant, shall be resolved through direct communication between the issuing judicial authority and magistrates' court, and where appropriate the involvement of the Central Authority or the competent authority in the Member State.

Guarantees by the issuing State prior to execution.

70.(1) This section implements Article 123.

- (2) The execution of an arrest warrant transmitted in accordance with section 69 may be subject to the conditions in subsections (3) and (4).
- (3) Where the offence in the arrest warrant is punishable by a custodial life sentence or a lifetime detention order in the issuing State, the issuing State must have provisions in its legal system for-
- (a) a review of the penalty or measure imposed, either on request or within 20 years of the imposition of the penalty or measure; or
 - (b) an application of measures of clemency which the person is entitled to apply for under the law or practice of the issuing State,

aimed at the non-execution of the penalty or measure.

- (4) Subject to subsection (5), where the person named in the arrest warrant is-

- (a) a resident of Gibraltar; or
- (b) a British national,

and that person is surrendered to the issuing State, the issuing State must, after the person is heard, be returned to Gibraltar in order to serve a custodial sentence or detention order passed against them in the issuing State.

- (5) Where the consent of a person to the transfer of the sentence or detention order is required in order for them to be returned to Gibraltar in accordance with subsection (4), that person shall not be returned to Gibraltar to serve the sentence unless the person after being heard consents to be returned.
- (6) If there are substantial grounds for believing that there is a real risk to the fundamental rights of the requested person, the magistrates' court may require, as appropriate, and prior to deciding whether to execute an arrest warrant, any guarantees from the issuing State as to the treatment of the requested person following their surrender to the issuing State.

Applications by the Central Authority.

- 71.(1) Subject to section 70, the Central Authority shall, as soon as may be practicable after it receives an arrest warrant transmitted to it under section 69, take the necessary steps to ensure its execution.
- (2) Upon being transmitted under section 69, an 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.

Provisional arrest.

- 72.(1) A police officer may arrest a person without a warrant if they have reasonable grounds for believing that an arrest warrant has been or will be issued in respect of that person by an issuing judicial authority.
- (2) A police officer may arrest a person under subsection (1) in any part of Gibraltar.
- (3) Where a person is arrested under this section—
- (a) an arrest warrant must be transmitted to the Central Authority by the issuing State within 48 hours of the arrest;
 - (b) the person must, together with a copy of the arrest warrant, transmitted in accordance with section 69, be brought before the magistrates' court within 48 hours of the arrest.
- (4) A copy of the arrest warrant must be given to the person as soon as practicable after their arrest.
- (5) If subsection (3) is not complied with, and the person applies to the court to be discharged, the court must order their discharge.
- (6) The person that is arrested under this section must be treated as continuing in legal custody until they are brought before the court under subsection (3)(b) or are discharged under subsection (5).
- (7) Subsection (8) applies if —
- (a) a person is arrested under this section on the basis of a belief that an arrest warrant has been issued or will be issued in respect of them;
 - (b) the person is discharged under subsection (5).
- (8) A person must not be arrested again under this section on the basis of a belief relating to the same warrant.

Rights of the requested person.

- 73.(1) This section implements Article 128.
- (2) Without prejudice to any other statutory provision or rule of law relating to the rights of an arrested person, a person arrested under an arrest warrant transmitted under section 69 must, upon their arrest, be informed-
- (a) of the arrest warrant and its contents;
 - (b) of their right to consent to their being surrendered to the issuing State under section 75.
- (3) A person who is arrested, and does not speak or understand the language spoken by a police officer or the magistrates' court has the right-
- (a) to request the assistance of an interpreter; and
 - (b) to be provided with a written translation of the arrest warrant in a language that the person understands.
- (4) The requested person shall-
- (a) upon their arrest, have the right to obtain, or be provided with professional legal advice;
 - (b) upon their arrest, have the right to have the consular authorities of their country of nationality, or in the case of a stateless person, the consular authorities of the state of their residence, informed of their arrest, without delay, and to communicate with those authorities;
 - (c) without prejudice to the time limits contained in section 82, be informed of the right to appoint a legal representative and obtain, or be provided with, professional legal advice in the issuing State for the purposes of assisting the requested person in the arrest warrant proceedings in that State.

Keeping the person in detention.

- 74.(1) This section implements Article 129.
- (2) A person arrested under an arrest warrant transmitted under section 69, shall subject to section 72(3), and together with a copy of the warrant transmitted in accordance with section 69, as soon as practicable after their arrest be brought before the magistrates' court which must, if satisfied that the person is the person in respect of whom the arrest warrant was issued –

- (a) remand the requested 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 purposes of section 76;
 - (c) inform the person of the arrest warrant, and of their right to consent to their surrender to the issuing State under section 75, to obtain or be provided with professional legal advice, and to obtain, or be provided with, where appropriate, the services of an interpreter.
- (3) If the magistrates' court decides to grant bail under subsection (2) it may order such measures or impose such conditions that it deems necessary to ensure that the requested person does not abscond.

Consent to surrender.

75.(1) This section implements Articles 130 and 134.

- (2) Where a person is brought before the magistrates' court under section 74, they may consent to their being surrendered to the issuing State and, where they do so consent, the court shall, if it is satisfied that –
- (a) the arrest warrant received under section 69 has been executed in accordance with the provisions of this Part;
 - (b) the surrender of the person is not prohibited by this Part;
 - (c) the person voluntarily consents to their being surrendered to the issuing State and is aware of the consequences of their consent; and
 - (d) the person has obtained, or been given the opportunity of obtaining or been provided with, professional legal advice before consenting to their surrender,

make an order directing that the person be surrendered to any person that is duly authorised by the issuing State to receive them.

- (3) Where a person is brought before the magistrates' court under section 74, they may, if appropriate, at the same time as giving their consent for their surrender under subsection (2), renounce their entitlement to the 'speciality rule'.
- (4) Where the person renounces their entitlement to the 'speciality' rule referred to in subsection (3), the magistrates' court must, if satisfied that –
- (a) the arrest warrant is transmitted under section 69;
 - (b) the surrender of the person is not prohibited by this Part;

- (c) the person voluntarily renounces their entitlement to the ‘speciality rule’, and is aware of the consequences of their renunciation; and
- (d) the person has obtained, or been given the opportunity of obtaining or being provided with professional legal advice before renouncing their entitlement to the ‘speciality rule’,

make an order, in addition to or include in the order made under subsection (2), directing that the person has renounced their entitlement to the ‘speciality rule’.

- (5) Where the magistrates’ court makes an order under this section it must-
 - (a) record in writing that the person concerned has consented to their being surrendered to the issuing State concerned;
 - (b) if appropriate, record in writing that the person concerned renounced their entitlement to the ‘speciality rule’; and
 - (c) remand the person in custody pending the carrying out of the terms of the order.
- (6) The order made by the magistrates’ court under subsection (2) should be made within 10 days after the person brought under section 74 gives their consent.
- (7) Where it is not possible for the magistrates’ court to make an order within the time limit in subsection (6), it-
 - (a) must immediately inform the issuing judicial authority giving the reasons for delay;
 - (b) may extend the time for making an order under subsection (6) for a further 30 days.
- (8) Where a court decides not to make an order under this section-
 - (a) it must give reasons for its decision; and
 - (b) the person must, subject to subsection (9), be released from custody.
- (9) Subsection (8) does not apply –
 - (a) in the following circumstances-
 - (i) where the person has been sentenced to a term of imprisonment for an offence of which they were convicted in Gibraltar;

- (ii) where on the date on which the person would, but for this subsection, be entitled to be released under subsection (8), all or part of the term of imprisonment remains unexpired; and
 - (iii) where the person is required to serve all or part of the remainder of that term of imprisonment; or
- (b) in the following circumstances-
 - (i) where the person has been charged with or convicted of an offence in Gibraltar; and
 - (ii) on the date on which the person would, but for this paragraph, be entitled to be released from custody under subsection (8), they are required to be in custody by virtue of having been remanded in custody pending their being tried, or the imposition of sentence, in respect of that offence.
- (10) Consent, and if appropriate, renunciation of the ‘speciality rule’ may be revoked by the person named in the arrest warrant before the magistrates’ court.
- (11) Where subsection (10) applies, the magistrates’ court must-
 - (a) record in writing that the person concerned has revoked their consent to their being surrendered to the issuing State concerned or their renunciation of their entitlement to the ‘speciality rule’; and
 - (b) make any order it deems necessary for the surrender of the person to the issuing State including an order to remand the person in custody pending the carrying out of the terms of the order.
- (12) Where the consent is revoked or, if appropriate, the renunciation of the ‘speciality rule’ is revoked by the person named in the arrest warrant, the period of time between the date of consent and the date of revocation shall not be taken into account in establishing the time limits laid down in section 82.

Hearing of the requested person.

76.(1) This section implements Articles 131, 134 (3) to (4), and 136.

- (2) Where a requested person does not consent to surrender to the issuing State, a hearing shall take place before a magistrates’ court.
- (3) Gibraltar law shall govern the hearing, and the hearing must be conducted with any conditions mutually agreed between the issuing judicial authority and the executing judicial authority.

- (4) The requested person shall be entitled to be assisted by a lawyer in accordance with the law of the issuing State.
- (5) In accordance with Article 136(3), another court may conduct the hearing, if the Chief Justice so directs.
- (6) The magistrates' court may, after hearing that person, make an order directing that the person be surrendered to any person duly authorised by the issuing State to receive them.
- (7) The magistrates' court may make an order under subsection (6) where it is satisfied that the following provisions apply-
 - (a) the arrest warrant transmitted under section 69 and, where appropriate, such undertakings or statements as are required under this Part are provided to the court;
 - (b) the magistrates' court is satisfied that the person before it is the person in respect of whom the arrest warrant was issued;
 - (c) the surrender of the person is not prohibited by this Part;
 - (d) the arrest warrant transmitted under section 69 has been executed in accordance with the provisions of this Part;
 - (e) the person has obtained, or been given the opportunity of obtaining or being provided with professional legal advice by a lawyer appointed by the issuing State before the hearing; and
 - (f) any conditions agreed between the Central Authority and the issuing State pursuant to Article 136(2) have been complied with.
- (8) When making an order under subsection (6) the magistrates' court shall also make an order remanding the person in custody pending their surrender and must inform the person-
 - (a) that they will not, without the person's consent, be surrendered to the issuing State, before the expiration of the period of 7 days specified in section 96; and
 - (b) of their right to appeal to the Supreme Court on a point of fact or law at any time before their surrender to the issuing State in accordance with this Chapter.
- (9) In fixing a date under section 74(2) the court shall have regard to the requirement that an order under subsection (6) should be made within a period of 60 days after the arrest of the requested person.

- (10) Where the order referred to in subsection (6) cannot be made within the period of 60 days, the magistrates' court-
- (a) must immediately inform the issuing judicial authority giving reasons for the delay; and
 - (b) may extend the time limit by a further 30 days.
- (11) 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 (12), be released from custody.
- (12) Subsection (11) shall not apply –
- (a) in the following circumstances-
 - (i) where the person has been sentenced to a term of imprisonment for an offence of which they were convicted in Gibraltar;
 - (ii) where on the date on which the person would, but for this subsection, be entitled to be released under subsection (7), all or part of the term of imprisonment remains unexpired; and
 - (iii) where the person is required to serve all or part of the remainder of that term of imprisonment; or
 - (b) in the following circumstances-
 - (i) where the person has been charged with or convicted of an offence in Gibraltar; and
 - (ii) where on the date on which the person would, but for this paragraph, be entitled to be released from custody under subsection (7), they are required to be in custody by virtue of having been remanded in custody pending their being tried, or the imposition of sentence, in respect of that offence.

Surrender decision.

77.(1) This section implements Article 132.

- (2) For the purposes of the hearing under section 76, the magistrates' court must have regard to the time limits and the conditions under this Part, and in particular the principle of proportionality set out in Article 116.

- (3) In proceedings to which this Chapter applies, the magistrates' court may if of the opinion that the information provided by the issuing State is not sufficient to enable it to decide on surrender of the requested person -
- (a) require the issuing State to provide it with such additional documentation or information as necessary (in particular with respect to the principle of proportionality referred to in subsection (2) and sections 69(6), 70, and Chapter 3); and
 - (b) request that the issuing State provide the further information as a matter of urgency and within the period the magistrates' court may specify, taking account of the time limits provided for in Article 134.
- (4) The magistrates' court may at any time receive and make use of additional information received from the issuing State in accordance with Article 132(3).

Situation pending the decision.

78.(1) This section implements Article 135.

- (2) Where an arrest warrant transmitted under section 69 is issued for the purposes of a criminal prosecution, the magistrates' court must either—
- (a) agree to the requested person being heard in accordance with section 76; or
 - (b) agree to the temporary transfer of the requested person.
- (3) Where a temporary transfer under subsection (2)(b) is decided upon by the magistrates' court, both the magistrates' court and the issuing judicial authority must by mutual agreement decide the conditions and the duration of the temporary transfer of the person requested in the arrest warrant.
- (4) Where a person is temporarily transferred under this section, they must be able to return to Gibraltar in order to attend hearings concerning them as part of the surrender procedure.

Conditions for surrender.

79.(1) This section implements Article 144(1) to (4).

- (2) Subject to section 57(3), the provisions of this section and section 80, a person shall not be surrendered under this Chapter unless—
- (a) under the law of the issuing State, a person who is surrendered to it pursuant to an arrest warrant cannot be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in their personal freedom, for an offence committed before their surrender other than the offence specified in the arrest warrant; or

- (b) an undertaking in writing is received by the magistrates' court from 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 their personal freedom, for an offence committed before their surrender other than the offence specified in the arrest warrant.
- (3) It shall be presumed that the law of the issuing State allows the surrender of the person by virtue of subsection (2)(a) unless it is demonstrated otherwise on the balance of probabilities.
- (4) The surrender of a person under this Chapter shall not be refused on the ground that it is intended to proceed against them in the issuing State for an offence (other than the offence specified in the arrest warrant) alleged to have been committed by them before their surrender provided that—
 - (a) upon conviction they are not liable to a term of imprisonment or detention; or
 - (b) in circumstances where upon conviction they are liable to a term of imprisonment or detention and such other penalty as does not involve a restriction of their personal liberty, the magistrates' court is satisfied that the said other penalty only will be imposed should they be convicted of the offence concerned.
- (5) The surrender of a person under this Chapter shall not be refused on the ground that it is intended to impose in the issuing State a penalty or measure (other than a penalty or measure consisting of the restriction of the person's liberty) including a financial penalty or measure in respect of an offence—
 - (a) of which the person claimed has been convicted;
 - (b) that was committed before their surrender; and
 - (c) that is not the offence specified in the arrest warrant,notwithstanding that where the 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) they may, under the law of the issuing State be detained or otherwise deprived of their personal liberty.
- (6) The surrender of a person under this Chapter shall not be refused on the ground that it is intended to proceed against or detain them 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 their surrender;
- (c) that is not the offence specified in that warrant concerned, or an offence disclosed by the same facts as the offence specified in the warrant, or otherwise restricts their personal liberty as a consequence of being convicted of the offence,

provided that the magistrates' court is satisfied that-

- (i) the person consents to the surrender at the same time as they renounce the 'speciality rule' in accordance with Article 130; or
- (ii) after their surrender the person renounces the 'speciality rule' with regard to a specific offence preceding their surrender; and
- (iii) under the law of the issuing State the person's 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,

and the renunciation has been recorded in such a way as to make clear that the person voluntarily renounces their entitlement to the 'speciality rule', that they are aware of the consequences of their renunciation, and that they have the right to obtain professional legal advice or obtained this advice.

(7) The surrender of a person must not be refused on the ground that it is intended-

- (a) to proceed against them in the issuing State for an offence committed or alleged to have been committed by the person before their 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 they were convicted before their surrender; or
- (c) to proceed against or detain them 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 their 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.

(8) In subsection (7) "offence" means an offence other than-

- (a) the offence specified in the arrest warrant concerned or an offence disclosed by the same facts as the offence specified in that warrant; or

- (b) an offence in respect of which a person could not, by virtue of this Part be surrendered under this Part; and
 - (c) that is an offence under the law of the issuing State—
 - (i) on the day of its commission or alleged commission; or
 - (ii) on the day on which the arrest warrant is issued.
- (9) A person shall be surrendered under this Chapter notwithstanding that it is intended—
- (a) to proceed against them in the issuing State for an offence committed or alleged to have been committed by them before their 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 they were convicted before their surrender; or
 - (c) to proceed against or detain them 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 their surrender, where the offence concerned is not the offence specified in the arrest warrant or an offence disclosed by the same facts as the offence specified in that warrant,

provided that 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 they are surrendered during which they shall be free to leave the issuing State, or unless having been so discharged they leave the issuing State and later return there.

- (10) Where the situations set out in section 70 apply, the Central Authority may receive guarantees from the issuing State in accordance with Article 123.

Incoming request for consent for prosecution.

80.(1) This section implements Article 144(5).

- (2) The magistrates' court may receive a request from an issuing judicial authority for consent in accordance with Article 144(5).
- (3) For the purposes of a request from an issuing judicial authority referred to in subsection (2), the magistrates' court may receive from the issuing judicial

authority, a translation referred to in section 69(6)(b) and the information referred to in section 69(6)(a).

- (4) Where the magistrates' court or the Central Authority receive a request for consent as referred to in subsection (2) for a person named in an arrest warrant transmitted in accordance with section 69 from an issuing judicial authority–
- (a) consent must be given where the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Chapter;
 - (b) consent must be refused on the grounds referred to in Article 119;
 - (c) consent may be refused on the grounds referred to in Articles 120 and 122(2),
and the magistrates' court must make a decision no later than 30 days after receipt of a request from the issuing judicial authority.

Surrender subject to undertaking-subsequent extradition.

81.(1) This section implements Article 145.

- (2) Where a person has been surrendered to the issuing State in accordance with–
- (a) an arrest warrant or a European arrest warrant, that person subject to subsection (3)–
 - (i) shall not be surrendered to a Member State other than the issuing State pursuant to a European Arrest Warrant or an arrest warrant issued by a judicial authority in that other State; and
 - (ii) in respect of an offence committed or alleged to have been committed before their surrender to the issuing State,

without the consent of the executing judicial authority which surrendered the person;
 - (b) an arrest warrant, that person–
 - (i) shall not be extradited to a third country or surrendered the United Kingdom;
 - (ii) in respect of an offence committed or alleged to have been committed before their surrender to the issuing State,

without the consent of the executing judicial authority which surrendered the person.

- (3) Consent is not required under subsection (2)(a) in any of the following cases–

- (a) when the person having had the opportunity to leave the issuing State but has not done so within 45 days of their final discharge, or has returned to the issuing State after leaving it;
 - (b) where the requested person consents to being surrendered to the Member State, other than the executing State, pursuant to an arrest warrant or a European arrest warrant;
 - (c) where the requested person is not subject to the ‘speciality rule’ in accordance with Article 144(4)(a), (e), (f) or (g).
- (4) The consent of the requested person in accordance with subsection (3)(b), must be—
 - (a) made before the issuing judicial authority;
 - (b) recorded by the issuing judicial authority,and the person must –
 - (i) give their consent voluntarily after having obtained, or having been given the opportunity of obtaining or being provided with, professional legal advice before consenting to their surrender; and
 - (ii) be aware of the consequences of their providing consent.
- (5) The magistrates’ court may only accept a request for its consent to the surrender of a person from an issuing State, where the request is submitted in accordance with Article 126 and is accompanied by a translation referred to in section 69(6)(a), and the information referred to in section 69(6)(b).
- (6) The magistrates’ court –
 - (a) must provide its consent to a request where the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Chapter;
 - (b) must refuse its consent to a request on the grounds referred to in Article 119;
 - (c) may refuse its consent to a request on the grounds referred to in Articles 120 and 122(2), and the magistrates’ court must make a decision on the request no later than 30 days after receipt of a request.
- (7) Notwithstanding any notifications made under Articles 144(1) or (2), a person that has been surrendered pursuant to an arrest warrant must not be extradited to a third

country or surrendered to the United Kingdom without the consent of the magistrates' court that surrendered the person.

- (8) The consent of the magistrates' court referred to in subsection (7) must be given in accordance with the Conventions which apply to Gibraltar as well as the applicable provisions under Gibraltar law.
- (9) For the cases referred to in section 70, the Central Authority or magistrates' court must receive guarantees from the issuing State before consent may be granted under this section.

Time Limits for surrender of requested person.

82.(1) This section implements Article 140.

- (2) A person to whom an order for the time being in force under section 75 applies must be surrendered to the issuing State concerned—
 - (a) as soon as possible on a date agreed between the issuing State and executing State; and
 - (b) no later than 10 days after the order made under section 75.
- (3) If a person to whom an order for the time being in force under section 75 applies is not surrendered in accordance with subsection (2), due to circumstances beyond the control of the issuing State and Gibraltar, the magistrates' court must—
 - (a) immediately contact the issuing judicial authority and agree on a new surrender date; and
 - (b) surrender the person within 10 days of the date agreed under paragraph (a).
- (4) The surrender of a person to whom an order for the time being in force under section 75 applies may exceptionally be temporarily postponed for serious humanitarian reasons, for instance if there are substantial grounds for believing that surrender at that time would manifestly endanger the requested person's life or health.
- (5) The surrender of a person which has been postponed under subsection (4) must be executed as soon as the grounds postponing the surrender have ceased to exist, and the magistrates' court must—
 - (a) immediately inform the issuing judicial authority and agree on a new surrender date; and
 - (b) surrender the person within 10 days of the date agreed under paragraph (a).

- (6) If a person to whom an order for the time being in force under section 75 applies is not surrendered to the issuing State in accordance with subsections (2), (3), (4) and (5) they must, subject to subsection (7), be released from custody immediately upon the expiration of the days referred to in subsections (2),(3), (4) and (5).
- (7) Subsection (6) does not apply–
 - (a) in the following circumstances-
 - (i) the person has been sentenced to a term of imprisonment or an offence of which they were convicted in Gibraltar;
 - (ii) on the date on which they would, but for this subsection, be entitled to be released from custody under subsection (6), 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) in the following circumstances-
 - (i) the person has been charged with or convicted of an offence in Gibraltar; and
 - (ii) on the date on which they would, but for this paragraph, be entitled to be released from custody under subsection (6) they are required to be in custody by virtue of having been remanded in custody pending their being tried, or the imposition of a sentence, in respect of that offence.
- (8) The issuing State and the executing State must contact each other as soon as it appears that the person is to be released under this section and agree the arrangements for the surrender of the person.
- (9) Where an order is made by the magistrates' court under section 76, the provisions of section 105 apply for the purposes of Article 140.
- (10) Where there is an appeal of an order under section 76 made by the magistrates' court, the provisions of section 106 apply.

Postponed or conditional surrender.

83.(1) This section implements Article 141.

- (2) The magistrates' court may, after deciding to execute the arrest warrant received under section 69, postpone the surrender of the requested person so that they may be prosecuted in Gibraltar or, if they have already been sentenced, so that they may serve in Gibraltar a sentence passed for an act other than that referred to in the arrest warrant.

- (3) Instead of postponing the surrender, the magistrates' court may temporarily surrender the requested person to the issuing State subject to conditions to be determined by mutual agreement between the magistrates' court and the issuing judicial authority.
- (4) Any agreement for the purposes subsection (3) must—
 - (a) be in writing;
 - (b) be binding on all the competent authorities in the issuing State.

Information on period of detention.

84.(1) This section implements Article 143(2).

- (2) Where a person is surrendered pursuant to an arrest warrant received under section 69, all information concerning the duration of the detention of the requested person on the basis of the arrest warrant shall be transmitted by the magistrates' court or the Central Authority to the issuing judicial authority at the time of the surrender.

Search and seizure powers and handing over of property.

85.(1) This section implements Article 146.

- (2) The powers to enter, search and seize provided for in the Criminal Procedure and Evidence Act 2011 shall be available in connection with an arrest warrant transmitted to Gibraltar under section 69 where, and for the purposes of satisfying section 12(a) of that Act, the matters set out in the arrest warrant shall be deemed to constitute an indictable offence.
- (3) Any property seized pursuant to subsection (2) must, if a person is surrendered under this Act, be handed over where—
 - (a) it may be required as evidence; or
 - (b) has been acquired by the requested person as a result of the offence,

to any person duly authorised by the issuing State to receive it, as soon as may be practicable after the surrender of the person, and the said property must be so handed over notwithstanding that the surrender of the person cannot be carried out by reason of the death or escape from custody of the requested person.
- (4) Any property seized pursuant to subsection (2) which is liable to seizure or confiscation in Gibraltar may, if criminal proceedings to which the property relates are pending in Gibraltar, be temporarily retained in Gibraltar for the purposes of those proceedings or may, if the Central Authority after consultation with the

Attorney General so directs, be handed over to the issuing State subject to the issuing State agreeing to return the property to Gibraltar.

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

Circumstances where bail or release from custody not permissible.

86. Where a person has been remanded in custody pursuant to an arrest warrant received under this Chapter, a person shall not be released on bail or otherwise released from custody if –

- (a) the following apply-
- (i) the person has been sentenced to a term of imprisonment for an offence of which they were convicted in Gibraltar;
 - (ii) on the date of their being remanded or on which they 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) the following apply-
- (i) the person has been charged with or convicted of an offence in Gibraltar; and
 - (ii) on the date of their being remanded or on which they would, but for this paragraph, be entitled to be released, they are required to be in custody by virtue of having been remanded in custody pending trial for that offence or the imposition of a sentence in respect of that offence.

Transit through Gibraltar.

- 87.(1) This section implements Article 142.

- (2) Subject to subsection (3), transit through Gibraltar of a person being conveyed from an executing State to an issuing State, upon their surrender pursuant to an arrest warrant, shall be permitted where the Central Authority receives a request in that behalf from the issuing State, and where the issuing State provides the Central Authority with the following information–

- (a) the identity and nationality of the person to whom the arrest warrant applies;
 - (b) information showing that an arrest warrant has been issued by the issuing State in respect of the person;
 - (c) the nature and legal classification of the offence under the law of the issuing State to which the arrest warrant relates; and
 - (d) a description of the circumstances of the alleged offence specified in the arrest warrant, including the alleged date and place for that offence.
- (3) A transit request in accordance with Article 142(5), and the information in subsection (2) may be addressed to the Central Authority by any means capable of producing a written record.
- (4) When responding to a transit request the Central Authority must notify its decision using the same procedure as for where a request is received under subsection (2).
- (5) 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 them.
- (6)
 - (a) This subsection applies to an aircraft that has taken off from a place (other than Gibraltar International Airport) and that is scheduled to land in a place (other than Gibraltar International Airport) and on board which there is a person who is being conveyed to an issuing State upon their surrender pursuant to an arrest warrant.
 - (b) Where an aircraft to which this subsection applies, lands (for whatever reason) in Gibraltar, the issuing State must, upon its landing or as soon as may practicable be after it lands, provide the Central Authority with the information in subsection (2).
 - (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 (5) shall apply accordingly.
- (7) Where a person has been extradited or surrendered-
 - (a) from a third country or the United Kingdom to a Member State or Gibraltar; or
 - (b) between one Member State and another,

this section shall apply mutatis mutandis subject to the following modifications, namely that –

- (i) the reference to an executing State shall be construed as a reference to a third State;
 - (ii) references to an arrest warrant shall be construed as references to an extradition request, a European Arrest Warrant or a TCA arrest warrant, as the case may be; and
 - (iii) references to an issuing State shall be construed as references to a State.
- (8) In this section, “executing State” means, in relation to a European arrest warrant or a TCA 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 or TCA arrest warrant, of a person in respect of whom that warrant was issued).
- (9) For the purposes of this Part-
- (a) “TCA” means the Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part, signed in Brussels and London on the 30th December 2020;
 - (b) “TCA arrest warrant” refers to arrest warrants governed by Title VII of Part Three of the TCA;
 - (c) “European Arrest Warrant” means 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 them under the law of that State; and
 - (d) “Framework Decision” means Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), as amended from time to time.

Multiple requests.

88.(1) This section implements Article 133(1) and (2).

(2) Where-

- (a) the Central Authority receives two or more arrest warrants or European arrest warrants for the same person; or

- (b) the Central Authority receives one or more arrest warrants or European arrest warrants in respect of a person, and the magistrates' court has issued an arrest warrant,

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 75, or section 76, in relation to the person, inform the magistrates' court as soon as reasonably possible of the receipt by it of those warrants.

- (3) Where the magistrates' court receives multiple arrest warrants as referred to in subsection (1) from the Central Authority, the court shall decide, having regard to all the circumstances, in relation to which of those arrest warrants or European Arrest Warrants—

- (a) whether the Central Authority shall perform its functions; or
- (b) where the Central Authority has already performed its functions in relation to one of those arrest warrants or European arrest warrants, whether the court shall perform its functions under sections 75 or 76 as may be appropriate.

- (4) Without prejudice to the generality of subsection (3), the magistrates' court must in making a decision under subsection (3) have regard to all the circumstances of the case and in particular—

- (a) the relative seriousness of the offences specified in the arrest warrant or European Arrest Warrant;
- (b) the places where the offences were committed or were alleged to have been committed;
- (c) the dates on which the arrest warrants or European Arrest Warrants were issued; and
- (d) whether the arrest warrants or European Arrest Warrants 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.

89.(1) This section implements Article 133(3) and (4).

- (2) If the Central Authority in Gibraltar receives—

- (a) an arrest warrant in respect of a person; and

- (b) a request from a third country for the extradition of that person or a TCA arrest warrant,

the Central Authority shall, where the magistrates' court has not yet made an order under sections 75 or 76, in relation to the person, inform the magistrates' court as soon as may be practicable of the receipt by it of the arrest warrant and the request for extradition, or the TCA arrest warrant.

- (3) Where the magistrates' court receives the arrest warrants and the extradition request referred to in subsection (2), the court in deciding whether the functions shall be performed-

- (a) in relation to the arrest warrant; or
- (b) in relation to the request for extradition to the third country under the law of Gibraltar relating to extradition; or
- (c) in relation to the TCA arrest warrant,

must have regard to all the circumstances in subsection (4).

- (4) Without prejudice to the generality in subsection (3), the magistrates' court in making the decision under subsection (3) has regard to –

- (a) the relative seriousness of the offence specified in the arrest warrant and the relative seriousness of the offence specified in either –
 - (i) the request for extradition; or
 - (ii) the TCA arrest warrant;
- (b) the places where the offences concerned were committed or are alleged to have been committed;
- (c) the date on which the arrest warrant was issued, the date on which the request for extradition was made, and the date on which the TCA arrest warrant was issued;
- (d) whether the arrest warrant was issued, or the TCA 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 provisions in an applicable convention.

- (5) The reference to “applicable convention” in subsection (4)(e) refers to any convention, international agreement or treaty which supports and applies to the arrest warrant, TCA arrest warrant, or the request for extradition, and where that convention, international agreement or treaty applies to Gibraltar.
- (6) If the Central Authority receives any of the requests referred to in subsection (2) 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 sections 75 or 76, in relation to that person, so inform the magistrates’ court, and functions shall not be performed under this Chapter in relation to any requests under subsection (2), unless the arrest and surrender of that person pursuant to a request by the International Criminal Court is prohibited, or not provided for, under the law of Gibraltar.

Competing international obligations.

90.(1) This section implements Article 138.

- (2) This Part shall not prejudice the obligations of the Central Authority and magistrates’ court where Gibraltar is the executing State, and the person named in the arrest warrant has been extradited to Gibraltar from a third country or from the United Kingdom, and the person is protected by speciality conditions under the provisions of the applicable extradition arrangement.
- (3) Where a person has been extradited to Gibraltar from a third State or the United Kingdom, the Central Authority must take all necessary measures to request without delay the consent of the third country or the United Kingdom, which extradited the person, to surrender the person to the issuing State.
- (4) Following the request referred to in subsection (3) and pending the decision of the third country or the United Kingdom, the Central Authority shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.
- (5) The time limits referred to in sections 75 or 76 shall not start to run until the day on which the speciality rules cease to apply to the person referred to in this section.

Notification of the decision.

91.(1) This section implements Article 139.

- (2) The magistrates’ court shall notify the issuing judicial authority immediately of the decision on the action to be taken under this Chapter on the arrest warrant transmitted under section 69.

CHAPTER 3

Grounds of refusal and non-ground of refusal

Grounds for mandatory refusal.

92.(1) This section implements Article 119.

(2) A person must not be surrendered under this Part if-

- (a) the person has, in accordance with the law of the executing State, become immune by virtue of any amnesty, from prosecution or punishment in Gibraltar for the offence specified in the arrest warrant issued in respect of them;
- (b) the executing judicial authority is informed that there is a final judgment in Gibraltar, in the United Kingdom or a Member State concerning the person and in respect of the same act or omission as contained in the arrest warrant and a penalty or punishment has been imposed on the person –
 - (i) which has been enforced;
 - (ii) which is in the process of being enforced; or
 - (iii) which can no longer be enforced under the law of the Member State, Gibraltar law or under the law of any part of the United Kingdom; or
- (c) the offence specified in the arrest warrant in respect of a person corresponds to an offence under Gibraltar law in respect of which a person of the same age as the person in respect of whom the arrest warrant was issued could not be proceeded against in Gibraltar by reason of their age.

Discretionary grounds of refusal.

93.(1) This section implements Article 120.

(2) The execution of an arrest warrant may be refused if-

- (a) subject to subsection (3), the act on which the arrest warrant is based does not constitute an offence under the law of the executing State;
- (b) 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 arrest warrant issued in respect of them;
- (c) the Attorney General has decided-

- (i) not to bring proceedings against a person;
- (ii) to enter a nolle prosequi in proceedings against a person; or
- (iii) to discontinue 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 arrest warrant issued in respect of them;

- (d) a final judgment has been given in Gibraltar or in the Member State in respect of the same acts as those that appear in the arrest warrant;
- (e) the right to commence criminal proceedings or to enforce a sentence or other punishment is statute barred under the law of Gibraltar, and the act falls within the jurisdiction of Gibraltar;
- (f) a final judgment has been given in a third country or in the United Kingdom in respect of the same acts as contained in the arrest warrant, provided that where a sentence of imprisonment, or detention, or penalty has been imposed on the person, it has been enforced, is in the process of being enforced or can no longer be enforced under the law of the sentencing state;
- (g) the arrest warrant has been issued for the purposes of the execution of a custodial sentence or detention order and where the executing State is Gibraltar—
 - (i) the requested person is a British national holding a valid identity card or residence permit issued in Gibraltar, or a person staying in, or resident in Gibraltar; and
 - (ii) the court makes an order requiring the person to serve the period of sentence or detention in accordance with Gibraltar law;
- (h) the arrest warrant relates to offences which—
 - (i) are deemed by the law of Gibraltar as having been committed in whole or in part in Gibraltar, or in a place treated as such; or
 - (ii) have been committed outside the issuing State, and the law of Gibraltar does not permit prosecution for the same offence if committed outside its jurisdiction;
- (i) there are reasonable grounds to believe that the arrest warrant has been issued for the purposes of facilitating the person's prosecution or punishment in the issuing State for reasons connected with their sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation, or that the person will be treated less favourably for any of those reasons; or

- (j) the arrest warrant has been issued for the purposes of executing a sentence of imprisonment or a detention order, and the requested person did not appear at the trial for which they received a sentence of a term of imprisonment or detention, unless the arrest warrant states that the procedural requirements in subsection (5) have been complied with.
- (3) The execution of the arrest warrant must not be refused under subsection (2)(a)-
- (a) if the conduct which constitutes the offence relates to a tax or duty (and it is immaterial that Gibraltar law does not contain the same type of rules for tax or duty as those of the law of the issuing State); or
 - (b) if the conduct constituting the offence relates to customs or exchange regulations (and it is immaterial that Gibraltar law does not contain the same type of rules for customs or exchange regulations as those of the law of the issuing State).
- (4) Where in relation to subsection (2)(g), the consent of the requested person to the transfer of a sentence of imprisonment or detention order to Gibraltar is required, the Central Authority or magistrates' court may refuse to execute the arrest warrant only after the requested person consents to the transfer of the sentence of imprisonment or detention order.
- (5) The requirements referred to in subsection (2)(j) are –
- (a) that in due time–
 - (i) either the requested person was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the enforceable judgment, or by other means the person actually received official information of the scheduled date and place of the trial in such a way that it was unequivocally established that the person was aware of the trial; and
 - (ii) the requested person was informed that an enforceable judgment may be handed down in their absence; or
 - (b) that the person being aware of the scheduled trial, had given a mandate to a legal representative, either appointed by them or by the competent authority of the State, to defend them at the trial and was in fact defended by that legal representative at the trial; or
 - (c) that the person, after being served with the enforceable judgment and being expressly informed about their right to a retrial or appeal in which they have the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined and which may lead to the original judgment being reversed–

- (i) they expressly stated that they did not contest the judgment; or
 - (ii) they did not request a retrial or appeal within the applicable time; or
- (d) the person was not personally served with the enforceable judgment but–
 - (i) they will be personally served with the enforceable judgment without delay after the surrender, and they will be expressly informed of their right to a retrial or appeal in which they have the right to participate and which allows the merits of the case including fresh evidence, to be re-examined, and which may lead to the original judgment being reversed; and
 - (ii) they will be informed of the time frame within which they have to request such a retrial or appeal, as mentioned in the relevant arrest warrant.
- (6) Where subsection (5)(a) and (d) apply, and the person named in the arrest warrant has not previously received any official information about the existence of the criminal proceedings against them, they may, when being informed of the content of the arrest warrant, request to receive a copy of the enforceable judgment before being surrendered.
- (7) Where the issuing judicial authority is informed of the request under subsection (6) the judgment shall be provided to the person sought via the Central Authority or the magistrates' court.
- (8) A request under subsection (6) is for information purposes only and must–
 - (a) not delay the surrender procedure;
 - (b) not delay the execution of the arrest warrant;
 - (c) not be regarded as formal service of the judgment; and
 - (d) not actuate any time limits applicable for requesting a retrial or appeal.
- (9) Where a person is surrendered to the competent authorities in Gibraltar subject to a requirement that–
 - (a) they will be personally served with the enforceable judgment without delay after the surrender and will be expressly informed of their right to a retrial or appeal in which they have the right to participate and which allows the merits of the case including fresh evidence, to be re-examined, and which may lead to the original judgment being reversed; and
 - (b) they will be informed of the time frame within which they have to request such a retrial or appeal, as mentioned in the arrest warrant,

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

Grounds for which execution cannot be refused.

94.(1) This section implements Articles 121(1), 122 and 142(2).

- (2) The execution of an arrest warrant may not be refused on the grounds that the offence may be deemed by the executing State as a political offence, or as an offence connected with a political offence, or as an offence inspired by political motives.
- (3) Where Gibraltar is the executing State, the execution of an arrest warrant cannot be refused on the grounds that the requested person is a British national, a resident of Gibraltar, or a person staying in Gibraltar.
- (4) Where the Central Authority refuses to execute an arrest warrant on the basis that an issuing State has made a notification under Article 122(2), the Attorney General shall consider in accordance with Article 122(3) instituting criminal proceedings against a British national, a resident of Gibraltar or a person staying in Gibraltar, which are commensurate with the subject matter of the arrest warrant after taking into account the views of the issuing State.
- (5) Where in accordance with Article 122(3) the Attorney General decides-
 - (a) not to institute criminal proceedings, the alleged victim of the offence on which the arrest warrant is based, must be provided with the reasons for the decision;
 - (b) to institute criminal proceedings, they must take appropriate measures to assist victims of the alleged offence and witnesses, in particular with the manner in which criminal proceedings are conducted in the following circumstances-
 - (i) where the victims are residents of Gibraltar;
 - (ii) where the witnesses are residents of Gibraltar.

Privileges and immunities.

95.(1) This section implements Article 137.

- (2) A requested person shall not be surrendered under this Part whilst they enjoy a privilege or immunity as referred to in Article 137.

- (3) As from the day that the magistrates' court is informed that a requested person has waived the privilege or immunity referred to in subsection (2), the time limits in Article 137 shall apply, and the Central Authority must ensure that the material conditions necessary for the effective surrender of the requested person are fulfilled as soon as that person no longer enjoys the privilege or immunity.
- (4) Where the power to waive the privilege or immunity lies with an authority in Gibraltar, the magistrates' court must, when seeking to execute an arrest warrant transmitted under section 69, request that authority to exercise that power without delay.
- (5) Where-
 - (a) the power to waive the privilege or immunity lies with an authority of a Member State, the United Kingdom, a third country or an international organisation; and
 - (b) the magistrates' court has issued an arrest warrant in accordance with section 58,the magistrates' court must request that the authority referred to in paragraph m(a) waive the privilege or immunity preventing the execution of the arrest warrant.

CHAPTER 4

Appeals

Appeal against surrender order.

- 96. (1) If the magistrates' court orders a person's surrender under this Part, the person may appeal to the Supreme Court against the order.
- (2) Subsection (1) does not apply if the order is made under section 75.
- (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 96.

- 97.(1) On an appeal under section 96, 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 their surrender.

Appeal against discharge at surrender hearing.

- 98.(1) If the magistrates' court orders a person's discharge at the surrender hearing the issuing State which issued the arrest warrant may appeal to the Supreme Court against the relevant decision.
- (2) Subsection (1) does not apply if the order for the person's discharge was under section 93(4).
- (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 98.

- 99.(1) On an appeal under section 98 the Supreme Court may—

- (a) allow the appeal; or
 - (b) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that—
 - (a) the magistrates’ court ought to have decided the relevant question differently;
 - (b) if the court had decided the question in the way the court ought to have done, the court would not have been required to order the person’s discharge.
- (4) The conditions are that—
 - (a) an issue is raised that was not raised at the surrender hearing or evidence is available that was not available at that hearing;
 - (b) the issue or evidence would have resulted in the magistrates’ court deciding the relevant question differently;
 - (c) if the court had decided the question in that way, the court would not have been required to order the person’s discharge.
- (5) If the Supreme Court allows the appeal it must—
 - (a) quash the order discharging the person;
 - (b) remit the case to the magistrates’ court; or
 - (c) direct the magistrates’ court to proceed as it would have been required to do if the court had decided the relevant question differently at the surrender hearing.
- (6) A question is the “relevant question” if the magistrates’ court’s decision on it resulted in the order for the person’s discharge.

Detention pending conclusion of appeal under section 98.

- 100.(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 98.
- (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 it may later grant bail.
- (4) An appeal under section 98 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 issuing State 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 State 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.

- 101.(1) Rules of court must prescribe the period (the relevant period) within which the Supreme Court must begin to hear an appeal under sections 96 or 98.
- (2) Rules of court must provide for the relevant period to start with the date on which the person in respect of whom an arrest warrant is issued was arrested under the arrest warrant.
- (3) The Supreme Court must begin to hear the appeal before the end of the relevant period.
- (4) The Supreme Court may extend the relevant period if it believes it to be in the interests of justice to do so, and this subsection may apply more than once.
- (5) The power in subsection (4) may be exercised even after the end of the relevant period.

Appeal to the Privy Council.

- 102.(1) An appeal lies to the Privy Council from a decision of the Supreme Court on an appeal under sections 96 or 98.
- (2) An appeal under this section lies at the instance of—
 - (a) the person in respect of whom the arrest warrant was issued; and
 - (b) the issuing State.
- (3) An appeal under this section lies only with the leave of the Supreme Court or

the Privy Council.

- (4) Leave to appeal under this section must not be granted unless—
 - (a) the Supreme Court has certified that there is a point of law of general public importance involved in the decision; and
 - (b) it appears to the court granting leave that the point is one which ought to be considered by the Privy Council.
- (5) An application to the Supreme Court for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the court makes its decision on the appeal to it.
- (6) An application to the Privy Council for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the Supreme Court refuses leave to appeal.
- (7) If leave to appeal under this section is granted, the notice of appeal must be filed before the end of the permitted period, which is 28 days starting with the day on which leave is granted.
- (8) If subsection (7) is not complied with—
 - (a) the notice of appeal must be taken to have been filed; and
 - (b) the appeal must be taken to have been dismissed by the Privy Council immediately after the end of the period permitted under that subsection.
- (9) These must be ignored for the purposes of subsection (8)(b)—
 - (a) any power of a court to extend the period permitted for bringing the appeal;
 - (b) any power of a court to grant leave to take a step out of time.
- (10) The Supreme Court may grant bail to a person appealing under this section or applying for leave to appeal under this section.

Powers of the Privy Council on appeal under section 102.

103.(1) On an appeal under section 102 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 arrest warrant was issued brings an appeal under section 102; and
 - (b) the Privy Council allows the appeal.
 - (3) The Privy Council must—
 - (a) order the person's discharge;
 - (b) quash the order for their surrender,
- if the appeal was against a decision of the Supreme Court to dismiss an appeal under section 96.
- (4) Subsection (5) applies if—
 - (a) the Supreme Court allows an appeal under section 96 by the person in respect of whom the arrest warrant was issued;
 - (b) the issuing State brings an appeal under section 102 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 97(5) discharging the person;
 - (b) order the person to be surrendered to the issuing State.
 - (6) Subsections (7) and (8) apply if—
 - (a) the Supreme Court dismisses an appeal under section 98 against a decision made by the judge at the surrender hearing;
 - (b) the issuing State which issued the arrest warrant brings an appeal under section 102 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 issuing State.
- (8) In any other case, the Privy Council must–
 - (a) quash the order of the magistrates’ court discharging the person in respect of whom the warrant was issued;
 - (b) remit the case to the magistrates’ court;
 - (c) direct the court to proceed as it would have been required to do if it had decided the relevant question differently at the surrender hearing.
- (9) A question is the “relevant question” if the magistrates’ court’s decision on it resulted in the order for the person’s discharge.

Appeals: general.

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

Surrender where no appeal.

105.(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 96 is given before the end of the period permitted under that section,

but this section does not apply if the order is made under section 75.

- (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 magistrates’ court makes the order, or
 - (b) if the court and the issuing State agree a later date, 10 days starting with the later date.
- (4) If subsection (2) is not complied with and the person applies to the magistrates’ court to be discharged, the court must order the person’s discharge, unless reasonable cause is shown for the delay.
- (5) The following 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.

106.(1) This section applies if–

- (a) there is an appeal to the Supreme Court under section 96 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 issuing 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 judicial authority agree a later date, 10 days starting with the later date.
- (4) For the purposes of this section, 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) If a person to whom an order under subsection (1) applies is not surrendered in accordance with subsections (2) and (3), due to circumstances beyond the control of the issuing State and the court –

- (a) the magistrates' court and the issuing State must immediately contact each other and agree a new surrender date;
- (b) the surrender of the person must take place within 10 days of the date agreed under paragraph (a).

(7) The surrender of a person to whom an order for the time being in force under subsection (1) applies may exceptionally be temporarily postponed for serious humanitarian reasons, including but not limited to where there are substantial grounds for believing that the surrender would manifestly endanger the requested person's life or health.

(8) The surrender of a person which has been postponed under subsection (7) must be executed as soon as the grounds postponing the surrender have ceased to exist, and the magistrates' court must-

- (a) immediately inform the issuing judicial authority and agree on a new surrender date; and
- (b) surrender the person within 10 days of the date agreed under paragraph (a).

(9) The magistrates' court and the issuing State shall consult each other and agree the surrender arrangements for the person.

(10) The following powers must be ignored for the purposes of subsection (3)–

- (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.

(11) The decision of the Privy Council on the appeal becomes final when it is made.

CHAPTER 5

Costs and expenses.

Costs where surrender ordered.

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

- (a) an order for the person's surrender is made under this Part;
 - (b) the Supreme Court dismisses an appeal under section 96;
 - (c) the Supreme Court or the Privy Council dismisses an application for leave to appeal to the Privy Council under section 102, if the application is made by the person;
 - (d) the Privy Council dismisses an appeal under section 102, 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.

108.(1) This section applies if any of the following occurs in relation to a person in respect of whom an arrest warrant under section 69 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 96;
 - (d) the Supreme Court or the Privy Council dismisses an application for leave to appeal to the Privy Council under section 102, if the application is made by the authority which issued the warrant;
 - (e) the Privy Council dismisses an appeal under section 102, if the appeal is brought by the authority which issued the warrant.
- (2) In a case falling within subsection (1)(a), an order under subsection (5) in favour of the person may be made by—
- (a) the magistrates' court, if the order for the person's discharge is made by that court;

- (b) the Supreme Court, if the order for the person's discharge is made by it;
- (c) the Privy Council, if the order for the person's discharge is made by it.
- (3) In a case falling within subsection (1)(b), the magistrates' court may make an order under subsection (5) in favour of the person.
- (4) In a case falling within subsection (1)(c), (d) or (e), the court by which the application or appeal is dismissed may make an order under subsection (5) in favour of the person.
- (5) An order under this subsection in favour of a person is an order for a payment of the appropriate amount to be made to the person out of the Consolidated Fund.
- (6) The appropriate amount is such amount as the court making the order under subsection (5) considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by them in the proceedings.
- (7) 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 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 Government for the purposes of this section, in any other case.

Costs where discharge ordered: supplementary.

- 109.(1) The Government 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 Government 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.

CHAPTER 6

Final provisions.

Expenses of execution.

110.(1) This section implements Article 147.

- (2) Expenses incurred in Gibraltar in relation to the execution of an arrest warrant from an issuing State may not be claimed from that issuing State.
- (3) The Government shall not be liable for expenses incurred in a Member State in relation to that State's execution of an arrest warrant issued under this Part.
- (4) Expenses falling outside the matters referred to in subsections (2) and (3) shall be borne by the issuing State.

Relationship with other instruments.

111.(1) This section implements Article 148.

- (2) Subject to subsection (3), from the date of entry into force of the TGEU, this Part replaces the obligations between Gibraltar and Member States relating to extradition in the following conventions—
 - (a) the European Convention on Extradition, done in Paris on 13 December 1957, and its protocols; and
 - (b) the European Convention on the Suppression of Terrorism,

so far as extradition is concerned, but this does not prejudice the obligations between Gibraltar and third countries under the instruments referred to in paragraphs (a) and (b).

(3) Where the conventions referred to in subsection (2)(a) or (b) apply to the-

- (a) territories of Member States; or
- (b) territories for whose external relations a Member State is responsible,

to which this Part does not apply, those conventions continue to apply as between those territories and Gibraltar.

Ongoing arrest warrants in the case of disapplication of the TGEU – savings provision.

112.(1) This section implements Article 150.

(2) Notwithstanding Articles 66, 67 and 334, the provisions of this Part apply in respect of arrest warrants where the requested person is arrested before the application of this Part, and this is irrespective of a decision by the executing judicial authority as to whether the requested person is to remain in detention or is to be provisionally released.

Application to existing European arrest warrants.

113.(1) This section implements Article 151.

(2) This Part applies to-

- (a) European arrest warrants issued, in accordance with the Framework Decision, by an issuing State or the magistrates' court before 31 December 2020; and
- (b) where the requested person has not been arrested for the purpose of the execution of that warrant by the date of entry into force of the TGEU.

Dated: 9th July 2026.

N FEETHAM KC,
Minister with responsibility for Justice,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations implement Chapter 5 of Title V of Part Two, Articles 115 to 151 of the Agreement in respect of Gibraltar entered into between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland.