

Mutual Legal Assistance (Council of Europe Convention and TGEU) Act 2018

Principal Act

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Amending enactments	Relevant current provisions	Commencement date
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AN ACT TO GIVE EFFECT IN GIBRALTAR TO THE COUNCIL OF EUROPE'S EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS MADE IN STRASBOURG ON 20TH APRIL 1959, AND ANY SUBSEQUENT PROTOCOLS AND AMENDMENTS, AND TO IMPLEMENT CHAPTER 6 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.

Part 1 Preliminary

Title.

1. This Act may be cited as the Mutual Legal Assistance (Council of Europe Convention and TGEU) Act 2018 and comes into force on the extension to Gibraltar of the Council of Europe's European Convention on Mutual Assistance in Criminal Matters made in Strasbourg on 20th April 1959.

Interpretation.

2.(1) In this Act—

“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;

“Competent Authority” means in relation to a request which concerns a State, that is not Gibraltar, any authority within a State that has competence to receive or send requests for mutual legal assistance, or the Union bodies notified in accordance with Article 68;

“Convention” means the Council of Europe's European Convention on Mutual Assistance in Criminal Matters, made in Strasbourg on 20th April 1959, and any subsequent amendments, Protocols or other instruments;

“court” includes a tribunal;

“the EU” (or “the Union”) has the meaning given by section 3(2) of the Treaty on Gibraltar and the European Union Act 2026;

“Gibraltar Competent Authority” means any of the following—

(a) Attorney General;

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- (b) Crown Counsel;
- (c) a police officer; or
- (d) HM Customs;

“joint investigation team” means an investigation team formed in accordance with Article 11 of the Second Additional Protocol to the Convention signed in Strasbourg on 8th November 2001 under the Joint Investigation Team Regulations 2014, or under the TGEU;

“measure” means an investigative measure under the Convention or the TGEU;

“Member State” means all the Member States of the EU;

“relevant offence” means-

- (a) a criminal offence which is not a political offence, nor an offence connected with a political offence, and the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the court of the requesting State;
- (b) a criminal offence to which the Convention or the TGEU applies, and is an offence under Gibraltar law and under the law of the requesting State; or
- (c) an act to which section 3(1)(b) of the Mutual Legal Assistance (International) Act 2005 applies;

“Second Additional Protocol” means the Second Additional Protocol to the European Mutual Assistance Convention, done at Strasbourg on 8 November 2001;

“State” means a State –

- (a) that has ratified the Convention, or a territory covered by that ratification, and this includes Gibraltar; or
- (b) that is bound by the TGEU, or a territory covered by the TGEU, and this includes Gibraltar;

“Specialised Committee on the Circulation of Persons” refers to the Committee established under Article 23 of the TGEU;

“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;

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“Third Additional Protocol” means the Third Additional Protocol to the European Mutual Assistance Convention, done at Valletta on 19 September 2025;

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

“videoconferencing” means the set of interactive telecommunications technologies which allow two or more locations to interact through simultaneous two-way video and audio transmissions.

(1A) In this Act, words and expressions that are not defined must-

- (a) if defined in the Convention or the TGEU, have the meaning given in the Convention or the TGEU; and
- (b) to the fullest extent possible, be construed as to give effect to the Convention or the TGEU.

(2) The terms “criminal proceedings”, “evidence”, “Government”, “Minister”, “administrative authorities”, “Central Authority” and “process” have the same meaning as in the Mutual Legal Assistance (International) Act 2005.

(3) In this Act, “Attorney General” includes any Crown Counsel.

Jurisdiction.

3. A court in Gibraltar shall have jurisdiction to hear any matter under this Act.

Part 2 Central Authority

Central Authority.

4. The Minister or any such person or persons as he may designate by Notice in the Gazette is the Central Authority in Gibraltar for the purposes of this Act.

Part 3 Requests for assistance

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

5.(1) The Mutual Legal Assistance (International) Act 2005 shall apply in relation to relevant offences to requests for assistance in criminal proceedings-

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- (a) received by the Central Authority in Gibraltar and made by a State under the Convention where the assistance requested is for-
 - (i) the service of process;
 - (ii) the procurement of evidence or the transmission of articles to be produced in evidence, records or documents;
 - (iii) the temporary transfer of a prisoner for the purpose of his personal appearance for evidential purposes (or the transit through Gibraltar of such a person); and
- (b) from Gibraltar for assistance in a State outside Gibraltar where the assistance requested is for-
 - (i) the service of process;
 - (ii) the procurement of evidence or the transmission of articles to be produced in evidence, records or documents;
 - (iii) the temporary transfer of a prisoner for the purpose of his personal appearance for evidential purposes (or the transit through Gibraltar of such a person),

as if that State is party to an agreement with the Government on mutual legal assistance in criminal matters based on the principle of reciprocity and is listed in Schedule 2 of that Act.

(2) The extent of the application of the Mutual Legal Assistance (International) Act 2005 is subject to regulations made by the Minister under section 14.

(3) The Mutual Legal Assistance (International) Act 2005 shall for the purposes of this Act be deemed to be modified as if the definition of “offence” in section 2 of that Act included fiscal offences.

Refusal to provide assistance.

6.(1) Assistance under this Act may, in addition to the criteria contained in section 3(2) of the Mutual Legal Assistance (International) Act 2005, be refused if the person who is the subject of a request for assistance has been convicted or acquitted in Gibraltar, or in a third State, of an offence which arises from the same conduct as that giving rise to the proceedings in the requesting State in respect of that person.

(1A) Assistance under this Act must not be refused solely on the grounds that the request for assistance relates to acts for which a legal person may be held liable in the requesting State.

(1B) Before refusing a request for assistance, the Central Authority must, where appropriate after consulting with the Competent Authority, consider whether the request may be granted partially or subject to any conditions as the Central Authority deems necessary.

(2) If a request for assistance is refused, the Central Authority shall inform the Requesting State of that decision and the reason for it as soon as possible.

(3) If an authority in Gibraltar, other than the Central Authority, receives a direct request for assistance, it shall-

- (a) transmit the request to the Central Authority; and
- (b) directly inform the requesting State that the request has been transmitted to the Central Authority in Gibraltar.

Postponement of assistance.

6A.(1) The execution of a request may be postponed by the Central Authority until such time as it considers reasonably necessary, where the execution of the request might prejudice-

- (a) criminal proceedings;
- (b) criminal investigations,

in Gibraltar.

(2) If it is likely that a request for assistance is to be postponed, the Central Authority must, where appropriate, consult the Competent Authority to consider whether assistance may be granted subject to such terms and conditions as the Central Authority deems necessary.

(3) If the requesting State accepts the terms and conditions required by the Central Authority referred to in subsection (2), the request for assistance may be acted on by the Central Authority subject to those terms and conditions.

(4) If the Central Authority postpones a request for assistance under subsection (1), it must inform the Competent Authority of-

- (a) any reasons for the decision, including any reasons that render it impossible to execute the request; or
- (b) any reasons that are likely to significantly delay the execution of the request.

Spontaneous information.

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6B.(1) The Gibraltar Competent Authority may -

- (a) disclose information under this section to a State; or
- (b) receive information under this section from a State,

where that information may assist a State with criminal proceedings or a criminal investigation, or assist a State with making a request for assistance under the Convention or under the TGEU.

(2) Any information disclosed under this section must be transmitted as between the Gibraltar Competent Authority and the Competent Authority in accordance with the Convention or under the TGEU.

(3) Where the Gibraltar Competent Authority receives information under this section from a State, neither party is bound by any restrictions and conditions imposed on the use of that information by that State, unless the Gibraltar Competent Authority receives prior notice of the information to be provided and agrees to the restrictions and conditions.

Form of request.

6C.(1) Subject to subsection (2), requests for assistance must be made in writing or, where possible, by any means of communication (which includes in electronic form) capable of producing a written record under conditions that allow the Central Authority to establish the authenticity of that request.

(2) A request under the Convention may-

- (a) in an urgent case; and
- (b) where direct transmission of the request is permitted under the Convention,

be made through the International Criminal Police Organisation (INTERPOL), and a copy of the request must be transmitted at the same time to the Competent Authority.

(3) Requests for assistance under the TGEU must be made using the standard form set out in Annex 15, as amended or modified from time to time by the Specialised Committee on the Circulation of Persons.

Procedure.

6D.(1) Subject to subsection (2), the Central Authority must comply with the formalities and procedures expressly indicated in a request from a requesting State, as required by the law of the requesting State.

(2) Subsection (1) does not apply where those formalities and procedures are contrary to the fundamental principles of Gibraltar law.

Time Limit for execution of requests under the Convention.

6E.(1) A request for assistance must be executed with the same celerity and priority as for a similar domestic case, and in any case in accordance with the provisions of this section.

(2) The Central Authority must take as full account as possible of a request from a requesting State, where the request indicates that due to-

- (a) procedural deadlines;
- (b) the seriousness of the offence; or
- (c) other particularly urgent circumstances,

a time limit must be set for the execution of the request.

(3) The Central Authority must endeavour to comply with any time limit which is set in accordance with subsection (2), to the extent possible.

(4) If in a specific case, the Central Authority is unable to comply with the time limit set under subsection (2), it must inform the requesting State without delay by any means, and the parties may then consult each other on the appropriate timing and conditions for the execution of the request.

(5) Where a request is sent from Gibraltar to a requested State, the requested State may be asked in the request to take as full account as possible of-

- (a) procedural deadlines;
- (b) the seriousness of the offence; or
- (c) other particularly urgent circumstances,

which necessitate that a time limit be set for the execution of the request.

(6) Where the request referred to in subsection (5) indicates a time limit, the requested State may be asked to comply with any time limit, to the extent possible.

(7) Where the requested State is unable to comply with the time limit indicated under subsection (6), the requesting State and the requested State may then consult each other on the appropriate timing and conditions for the execution of the request.

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Time Limits under the TGEU.

6F.(1) A request received from a Competent Authority under the TGEU must be executed as soon as possible, and no later than 45 days from receipt of the request by the Gibraltar Competent Authority, and the Competent Authority must be informed of its decision.

(2) The Gibraltar Competent Authority must execute the request received by them as soon as possible, and no later than 90 days following the taking of the decision referred to in subsection (1), or after the consultation referred to in section 21 has taken place.

(3) The Gibraltar Competent Authority must take as full account as possible of an indication in a request from the Competent Authority, that due to-

- (a) procedural deadlines;
- (b) the seriousness of the offence in question; or
- (c) other particularly urgent circumstances,

a shorter deadline than those provided in this section is necessary, or if the Competent Authority has indicated in the request that the measure must be carried out on a specific date.

(4) If a request is received by the Central Authority or Gibraltar Competent Authority for provisional measures in accordance with Article 24 of the Second Additional Protocol, it must make a decision on the request and communicate that decision to the requesting State as soon as possible after the receipt of the request.

(5) Following consultation with the Competent Authority, the Central Authority or Gibraltar Competent Authority may, in accordance with Gibraltar law and practice, lay down appropriate conditions in the light of the circumstances of the specific case, to limit the period for which the provisional measure referred to in subsection (4) is to be maintained.

(6) Where in accordance with the conditions referred to in subsection (5), the Central Authority or Gibraltar Competent Authority envisage the lifting of any provisional measures taken in accordance with Article 24 of the Second Additional Protocol, the court must, wherever possible, give the Competent Authority an opportunity to present its reasons in favour of continuing the measure.

(7) Where for the purposes of a specific request-

- (a) the time limits in subsections (1) or (2) cannot be met;
- (b) the time limit or specific date in subsection (3) cannot be met; or

(c) the decision on taking provisional measures under subsection (4) is delayed,

the Central Authority or Gibraltar Competent Authority must, without delay, inform the Competent Authority by any means, giving the reasons for the delay, and it must consult with them on the appropriate timing to execute the request.

(8) The provisions of this section take precedence over the provisions of Article 6 of the Third Additional Protocol.

Transmission of requests under the Convention.

6G. The transmission of requests under the Convention must comply with the provisions in section 6H.

Transmission of requests under the TGEU.

6H.(1) An-

- (a) initial request under the TGEU;
- (b) initial communication concerning spontaneous information and notifications referred to in Articles 3 and 4 of the Third Additional Protocol,

must be sent in accordance with Article 6(1).

(2) Where under the Convention direct transmissions or communications are permitted, Article 6(1) applies to the initial transmission or communication under the Convention, and to the initial communication referred to in subsection (1)(b).

(3) Communications other than those referred to in subsections (1) and (2) may be made directly between the Central Authority or Gibraltar Competent Authority and the Competent Authority.

(4) In -

- (a) urgent cases; or
- (b) where competent authorities of two or more States and Gibraltar need to coordinate judicial cooperation procedures,

any request, or communication concerning spontaneous information or notifications under Articles 3 and 4 of the Third Additional Protocol may be transmitted in accordance with subsection (5).

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- (5) Any request to which subsection (4) applies may be transmitted-
- (a) via Europol under Article 73, through the national contact point and liaison officers as referred to in Article 77; or
 - (b) through Eurojust in accordance with Articles 94 and 95.

Execution of letters rogatory in Gibraltar.

7.(1) Subject to subsection (1A), the Central Authority must make arrangements to allow representatives, officials or interested persons of the requesting State to be present for the execution of the letters rogatory in Gibraltar.

(1A) The Central Authority must allow officials or interested persons to be present at the execution of the letters rogatory under subsection (1), if it is satisfied that-

- (a) their presence is likely to assist the execution of the request; and
- (b) the need for supplementary requests for assistance is likely to be avoided.

(2) If the request referred to in subsection (1) is acceded to, the Central Authority shall, as soon as possible, notify the Central Authority of the requesting State about the time and place of the execution of the request, the authority or official designated to carry out the execution of the request and the procedures and conditions required by the Central Authority for the conduct of such execution.

Service of process.

8.(1) Service by the Central Authority may be effected by simple transmission of the request and annexed documents to the person to be served unless the requesting State expressly requests-

- (a) that service be effected by the Central Authority in the manner provided for the service of analogous documents under its own law; or
- (b) in a special manner consistent with such law.

(2) The Central Authority shall provide proof of service to the requesting State in the following manner-

- (a) by means of a receipt dated and signed by the person served; or
- (b) by means of a declaration made by the Central Authority that service has been effected and stating the form and date of such service.

(3) Any of the documents referred to in subsection (2) shall be sent by the Central Authority to the requesting State as soon as possible.

(4) If a witness or expert is required to appear as a party or attend as a witness, and fails to answer a summons, he shall not be subject to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting State and is there again summoned.

(5) If the requesting State considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the Central Authority shall invite the witness or expert to appear.

(6) The Central Authority shall inform the requesting State of any response received by the witness or expert.

(7) In the case of subsections (5) and (6), the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.

(8) If a specific request is made, the Central Authority may provide the witness or expert with payment in advance.

(9) The amount advanced under subsection (8) shall be endorsed on the summons and shall be refunded by the requesting State.

Part 4

Temporary Transfer of Prisoners

Temporary transfer of prisoners.

9.(1) The Central Authority shall petition the court for an order that a person in custody whose personal appearance for evidentiary purposes other than for standing trial is applied for by the requesting State, be temporarily transferred to the territory where the hearing is intended to take place, provided that-

- (a) he shall be sent back within the period stipulated by the Central Authority;
- (b) the person in custody consents;
- (c) his presence is not necessary at criminal proceedings pending in Gibraltar;
- (d) the transfer is not liable to prolong his detention; and
- (e) there are no other overriding grounds for not transferring him to the territory of the requesting State.

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(2) The transferred person shall remain in custody in the territory of the requesting State unless the Central Authority applies for his release.

(3) This section includes any proceedings on an appeal before a court against a decision from administrative authorities.

Transfer of person in custody to assist criminal investigation or proceeding in Gibraltar.

9A.(1) Where-

- (a) there is an investigation or proceeding in Gibraltar which requires the presence of a person held in custody in a State to be temporarily transferred to Gibraltar for the purpose of assisting here with that investigation or proceeding; and
- (b) there is an agreement between the Central Authority and the Competent Authority relating to paragraph (a),

the Central Authority must petition the court for an order providing that the person in custody in that State be temporarily transferred for this purpose.

(2) An order may be made by the court in respect of a person in custody under subsection (1) only if –

- (a) the requirements in subsection (3) are agreed to by the Central Authority and the Competent Authority; and
- (b) it appears to the court that it is necessary for the person to be present in Gibraltar to assist for the purposes of a criminal investigation or criminal proceeding in Gibraltar.

(3) The requirements are that-

- (a) the period of detention the person undergoes in Gibraltar must be deducted from the period of custody in the State;
- (b) the person must be sent back within the period stipulated by the requested State;
- (c) the person has made a written statement consenting to be transferred for the purpose mentioned in subsection (1); and
- (d) there are no other overriding grounds for not transferring the person to Gibraltar.

(4) The written statement consenting to be transferred for the purpose mentioned in subsection (1) cannot be withdrawn once a court grants an order under subsection (2).

- (5) An order under this section authorises-
- (a) the bringing of the person to Gibraltar;
 - (b) the taking of that person to, and their detention in custody at, any place or places specified in the order; and
 - (c) the return of the person to the requested State.
- (6) The person must remain in custody until the requested State applies for their release.
- (7) The costs of transfer of the person in custody to and from Gibraltar under this section must be borne by the Government of Gibraltar.
- (8) A person is not subject to the applicable immigration legislation in respect of their entry into Gibraltar in accordance with an order under this section, but if the order ceases to have effect while that person is still in Gibraltar-
- (a) that person has to be treated for the purpose of that Act as if they are unlawfully present in Gibraltar; and
 - (b) the provisions for the removal of that person must have effect.

Personal appearance of sentenced persons for the purposes of a review.

9B.(1) For the purposes of this section-

- (a) “sentence” means any punishment or measure that involves deprivation of liberty ordered by a court for a limited or unlimited period of time on account of the commission of a relevant offence;
 - (b) a “sentencing State” means the State in which the sentence concerned was imposed on a person;
 - (c) a “sentenced person” means a person on whom a sentence has been imposed in a sentencing State, and who has been transferred to State B to serve that sentence.
- (2) Where Gibraltar is State B, the Central Authority may petition the court for an order that the sentenced person whose personal appearance is applied for by the sentencing State for the purposes of a review of the sentence, may be temporarily transferred to the sentencing State where a review of the sentence is intended to take place.
- (3) An order under subsection (2) may be granted by the court if –

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- (a) the requirements in subsection (4) are agreed to by the Central Authority and the sentencing State; and
 - (b) it appears to the court that it is necessary for the person to be present in the sentencing State for the review of their sentence.
- (4) The requirements are that-
- (a) the period of custody under the sentence must be deducted from the period of detention the person undergoes in the sentencing State;
 - (b) the person must be sent back within the period stipulated by the Central Authority;
 - (c) the person has made a written statement consenting to be transferred for the purpose mentioned in subsection (2); and
 - (d) there are no other overriding grounds for not transferring the person to the territory of the sentencing State.
- (5) An order which is granted by the court under this section authorises-
- (a) the taking of the person to a place in Gibraltar and delivery of that person at a place of departure from Gibraltar into the custody of a person representing the sentencing State to which the person is to be transferred; and
 - (b) the return of the person to Gibraltar and that person's transfer in custody to the place where that person is liable to be detained under the sentence to which the person is subject.
- (6) The person must remain in the custody of the sentencing State unless the Central Authority applies for their release.
- (7) The costs of transfer of the person in custody to and from Gibraltar under this section must be borne by the sentencing State.
- (8) Where a person has been transferred under this section to the sentencing State, they may make their appearance before the judicial authorities of the sentencing State conditional on a prior assurance being given to them that they will not be prosecuted, detained or subjected to any other restriction of their personal liberty in that State in respect of acts or convictions prior to their departure from Gibraltar and not specified in the order.
- (9) Subsection (8) does not apply when the sentenced person having had a period of fifteen consecutive days from the date when their presence is no longer required by the

judicial authorities an opportunity of leaving, has nevertheless remained in the sentencing state, or having left it has returned.

(10) Where the sentencing State is Gibraltar, the Central Authority must petition the court for an order that-

- (a) a person serving the sentence in State B; and
- (b) whose personal appearance is applied for by the sentencing State for the purposes of a review of the sentence,

may be temporarily transferred to Gibraltar where a review of the sentence is intended to take place.

(11) A court may grant an order upon an application under subsection (10) if –

- (a) the requirements in subsection (12) are agreed to by the Central Authority and State B; and
- (b) it appears to the court that it is necessary for the person to be present in Gibraltar for the review of their sentence.

(12) The requirements are that-

- (a) the period of custody under the sentence must be deducted from the period of detention the person undergoes in Gibraltar;
- (b) the person must be sent back within the period stipulated by State B;
- (c) the person has made a written statement consenting to be transferred for the purpose of subsection (2); and
- (d) there are no other overriding grounds for not transferring the person to Gibraltar.

(13) An order which is granted by the court under this section authorises-

- (a) the bringing of the person to Gibraltar;
- (b) the taking of that person to, and their detention in custody at, any place or places specified in the order; and
- (c) the return of the person back to State B and their transfer in custody to the place where they are liable to be detained under the sentence to which that person is subject.

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(14) The person must remain in custody in Gibraltar unless State B applies for their release.

(15) The costs of transfer of the person in custody to and from the State under this section must be borne by the Government of Gibraltar.

(16) A person is not subject to the applicable immigration legislation in respect of their entry into Gibraltar in accordance with an order under this section, but if the order ceases to have effect while that person is still in Gibraltar-

- (a) that person has to be treated for the purpose of that Act as if they are unlawfully present in Gibraltar; and
- (b) the provisions for the removal of that person must have effect.

Part 5 Immunity of witnesses

Immunity of witnesses.

10.(1) In circumstances where section 20 of the Mutual Legal Assistance (International) Act 2005 applies, the Central Authority shall only consider the granting of immunity-

- (a) where this is specifically requested by the person to whom the immunity would apply; or
- (b) by the judicial authorities of the State from whom assistance is requested.

(2) A request for immunity shall not be granted where the Central Authority considers that granting it would not be in the public interest.

Part 5A Protection of witnesses.

Right to protection.

10A.(1) Without prejudice to any other provision under Gibraltar law, where a Competent Authority makes a request under this Act in relation to a witness and this witness is-

- (a) at risk of intimidation or in need of protection; and
- (b) in Gibraltar,

the Central Authority, with the assistance of the Gibraltar Competent Authority, must endeavour to agree measures with the Competent Authority for the protection of the witness concerned.

(2) In subsection (1) and section 10B-

- (a) “witness” means any person, irrespective of their status under Gibraltar law, who possesses information relevant to criminal proceedings or criminal investigations, and this includes experts as well as interpreters;
- (b) “intimidation” means any direct, indirect or potential threat to a witness, which may lead to interference with their duty to give evidence free from any influence of any kind.

(3) For the purposes of a request under subsection (1), the Gibraltar Competent Authority may make any arrangements under this Act or under any other enactment to protect a person that falls under subsection (1).

(4) In determining whether to agree measures under subsection (1), or cancel any measures, the Central Authority and the Gibraltar Competent Authority must in particular have regard to the circumstances and at all appropriate stages of the criminal investigation or criminal proceeding.

(5) The Gibraltar Competent Authority may vary or cancel any arrangements made by virtue of subsection (1) if it considers it appropriate to do so on the request of the witness or Competent Authority, or on its own initiative.

(6) Any arrangements made under subsection (1) must be recorded by the Central Authority, together with any variation or cancellation of these arrangements.

(7) Any arrangements that are made under this section must take into account the capabilities of the Central Authority and the Gibraltar Competent Authority.

(8) The Central Authority may seek to recover from a requesting State, any costs or expenses borne by the Gibraltar Competent Authority or the Central Authority in making arrangements under subsection (1), if they are of an extraordinary nature.

Protection of persons in a requested State.

10B.(1) Where the Central Authority makes a request under this Act to a Competent authority in respect of a witness, and this witness is-

- (a) at risk of intimidation or in need of protection; and
- (b) present in a requested State,

the Central Authority, with the assistance of the Gibraltar Competent Authority, must request measures from the Competent Authority for the protection of the witness concerned.

(2) Where appropriate, the Central Authority, with the Gibraltar Competent Authority may request that any measures made by the Competent Authority be cancelled or varied.

Part 5B **Videoconference.**

Hearing by videoconference - request received by Central Authority.

10C.(1) This section applies where-

- (a) there are criminal proceedings in a requesting State; and
- (b) a request is made by a Competent Authority to the Central Authority,

for the hearing of a witness or expert witness by videoconference or other audiovisual transmission where-
 - (i) the witness or expert witness is present in Gibraltar;
 - (ii) the attendance of that witness or expert witness in person at the criminal proceedings in the requesting State is not possible or desirable; and
 - (iii) where the witness or expert witness is the person referred to in subsection (2), their written statement consenting to the hearing.

(2) The criminal proceedings referred to in subsection (1) and in sections 10D to 10F includes any proceedings on an appeal before a court against a decision from an administrative authority.

(3) For the purposes of this section and sections 10D to 10F, “witness” or “expert witness” does not include a person-

- (a) suspected of having committed a relevant offence; or
 - (b) accused of having committed a relevant offence.
- (4) The Central Authority will only consider requests that contain-
- (a) details of the Competent Authority making the request;

- (b) the object of and the reason for the request;
 - (c) where possible, the identity and nationality of the person concerned;
 - (d) where necessary, the name and address of the person to be served with a summons;
 - (e) the names of the persons or authority who will be conducting the hearing;
 - (f) the reasons why it is not desirable or possible for the witness or expert witness to attend the hearing in person; and
 - (g) a written statement from the witness or expert witness consenting to the hearing by videoconference or other audiovisual transmission.
- (5) Unless the Central Authority considers it inappropriate to do so, it must by notice in writing-
- (a) nominate a court where the person may be heard; and
 - (b) make arrangements with the court where the person is to be heard.
- (6) Subject to subsection (7), the nominated court must-
- (a) agree the practical arrangements with the Competent Authority; and
 - (b) on the application of the Central Authority, issue an order that the witness or expert witness, who is the subject of the request, attend at a date, time and venue to provide assistance by videoconference or other audiovisual transmission, and to remain in attendance until excused by the court.
- (7) If the technical means for videoconference are not available, the Central Authority must use any other electronic means as may be available to it for the purpose in subsection (1) as agreed with the requesting State, or the requesting State may make the technical means available to the Central Authority by mutual agreement.
- (8) Before acceding to a request under subsection (1) the nominated court must be satisfied that the following requirements are met-
- (a) that the nominated court has the technical means to carry out the hearing; and
 - (b) that the execution of a request under this section is not contrary to the fundamental principles of Gibraltar law.

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(9) The following rules apply where a hearing is held by videoconference or other audiovisual transmission-

- (a) the person must give evidence before the nominated court;
- (b) the nominated court must be responsible for ensuring the identity of the person to be heard and that the fundamental principles of Gibraltar law are respected;
- (c) where the nominated court is of the view that during the hearing the fundamental principles of Gibraltar law are being infringed, it must immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;
- (d) measures for the protection of the person to be heard must be agreed, where necessary, between the nominated court and the Competent Authority;
- (e) the hearing must be conducted directly by, or under the direction of, the Competent Authority in accordance with the laws of the requesting State, and where necessary, assisted by an interpreter;
- (f) at the request of the requesting State or the person to be heard, the nominated court must ensure the person to be heard is assisted by an interpreter, if necessary;
- (g) the person to be heard may claim the right not to testify which would accrue to them under the law of the requesting State or under Gibraltar law.

(10) Without prejudice to any measures which are introduced under subsection (9)(d), on the conclusion of the hearing the nominated court must draw up minutes indicating-

- (a) the date and place of the hearing;
- (b) the identity of the person heard;
- (c) the identities and functions of all other persons in Gibraltar participating in the hearing;
- (d) any oaths taken; and
- (e) the technical conditions under which the hearing took place,

and the nominated court must forward these minutes to the Competent Authority.

(11) If a person fails to comply with an order or contravenes this section, the nominated court may exercise any of its powers to secure the attendance of the witness or expert witness.

(12) Anything done by the person to be heard in the presence of the nominated court which, if it were done in proceedings before that court, would constitute a contempt of court is to be treated for that purpose as done in proceedings before that court.

(13) Any statement made on oath by the person to be heard under this section is to be treated for the purposes of sections 457 or 459 of the Crimes Act 2011 as made in proceedings before the nominated court.

(14) Part 1 of Schedule 1 has effect for the purposes of this section.

Hearing by videoconference – request from Gibraltar.

10D.(1) This section applies where-

- (a) there are criminal proceedings before a court in Gibraltar; and
- (b) a request is made by the Central Authority to a requested State,
- (c) for the hearing of a witness or expert witness by videoconference or other audiovisual transmission where-
 - (i) the witness or expert witness is present in the requested State; and
 - (ii) the attendance of that witness or expert witness in person before the court in Gibraltar is not possible or desirable.

(2) If satisfied that the requirements in subsection (3) are met, and upon the application of the Gibraltar Competent Authority, a judge or justice of the peace may request assistance under this section from the requested State for the hearing of a witness or expert witness by videoconference or other audio visual transmission.

(3) The requirements are-

- (a) that the person named in the request has made a written statement consenting to hearing by videoconference or other audio visual transmission;
- (b) that the execution of such an investigative measure is not contrary to the fundamental principles of Gibraltar law;
- (c) it is in the interests of justice for the person take part in the proceedings;

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- (d) the parties to the proceedings have been given the opportunity to make representations.

(4) If the judge or justice of the peace grants the application under subsection (2), and makes the request to the Competent Authority, the Judicial Authority must communicate with the Competent Authority to agree the practical arrangements for the hearing and this includes-

- (a) summoning the witness or expert witness and setting out the time, the date and the venue at which the person is to appear for the hearing by videoconference or other audiovisual transmission; and
- (b) informing the witness or expert witness about their rights under Gibraltar law, within a reasonable time prior to the hearing to allow them to exercise their rights effectively.

(5) The following rules apply where the judge or justice of the peace grants an application under subsection (2), and a hearing is to be held by videoconference or other audiovisual transmission in the requested State-

- (a) the Competent Authority must be present during the hearing, where necessary assisted by an interpreter, and must be responsible for ensuring the identity of the person to be heard and that the fundamental principles of law are respected;
- (b) where the Competent Authority is of the view that during the hearing the fundamental principles of law of the requested State are being infringed, it must immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;
- (c) measures for the protection of the person to be heard in accordance with the request must be agreed, where necessary, between the Central Authority and the Competent Authority;
- (d) the hearing must be conducted directly by, or under the direction of the Central Authority in accordance with Gibraltar law, and where necessary, with the assistance of an interpreter;
- (e) at the request of the Central Authority or the person to be heard, the Competent Authority must ensure the person to be heard is assisted by an interpreter, if necessary;
- (f) in advance of the hearing, the person must be informed of the procedural rights which would accrue to them, including the right not to testify, under the law of the requested State and under Gibraltar law;

- (g) witnesses or expert witnesses may claim the right not to testify which would accrue to them under the law of the requested State or under Gibraltar law.

Hearing by telephone –request received by Central Authority.

10E.(1) This section applies where-

- (a) there are criminal proceedings in the requesting State; and
- (b) the Central Authority receives a request from a Competent Authority,

for a witness or expert witness present in Gibraltar to give evidence by telephone for the purpose of the proceedings before a Competent Authority.

(2) Unless it considers it inappropriate to do so, the Central Authority may by notice in writing-

- (a) nominate a court where the person may be heard; and
- (b) make arrangements with the court where the person is to be heard in the proceedings in question by telephone.

(3) The Central Authority must only consider a request under subsection (1) if the request contains the following-

- (a) details of the Competent Authority;
- (b) the object and reason for the request;
- (c) the name, address and nationality of the witness;
- (d) a statement that the witness is willing to give evidence by telephone in proceedings before that Competent Authority;
- (e) details of the persons who will be conducting the hearing.

(4) The nominated court must give effect to a request under this section if the conditions in subsection (5) can be satisfied.

(5) The conditions referred to in subsection (4) are -

- (a) the person to be heard agrees that the hearing takes place by telephone conference; and

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- (b) that the execution of a request under this section is not contrary to the fundamental principles of Gibraltar law.

(6) Anything done by the person to be heard in the presence of the nominated court which, if it were done in proceedings before the Competent Authority, would constitute a contempt of court is to be treated for that purpose as done in proceedings before that court.

(7) Any statement made on oath by the person to be heard under this section is to be treated for the purposes of sections 457 or 459 of the Crimes Act 2011 as made in proceedings before the nominated court.

- (8) Part 2 of Schedule 1 has effect.

Hearing by telephone – request from Central Authority.

10F.(1) This section applies where –

- (a) there are criminal proceedings in Gibraltar; and
- (b) the Central Authority makes a request to a Competent Authority,

for a witness or expert witness present in that State to give evidence by telephone for the purpose of the criminal proceedings in Gibraltar, and the attendance of that witness or expert witness in person before a court in Gibraltar is not possible or desirable.

(2) If satisfied that the requirements in subsection (3) are met, and upon the application of the Central Authority, a judge or justice of the peace may request assistance under this section from the requested State for the hearing of a witness or expert witness by telephone.

- (3) The requirements are-

- (a) that the person named in the request has made a written statement consenting to hearing by telephone;
- (b) that the execution of such an investigative measure is not contrary to the fundamental principles of Gibraltar law.

(4) If the judge or justice of the peace grants the application under subsection (2), and makes the request to the Competent Authority, the Judicial Authority must communicate with the Competent Authority to agree the practical arrangements for the hearing by telephone and this includes-

- (a) summoning the witness or expert witness and setting out the time, the date and the venue at which the person is to appear for the hearing by telephone; and

- (b) informing the witness or expert witness about their rights under Gibraltar law, within a reasonable time prior to the hearing to allow them to exercise their rights effectively.
- (5) The following rules apply where the judge or justice of the peace grants an application under subsection (2), and a hearing is to be held by telephone in the requested State—
- (a) the Competent Authority must be present during the hearing, where necessary assisted by an interpreter, and must be responsible for ensuring the identity of the person to be heard and that the fundamental principles of law are respected;
 - (b) where the Competent Authority is of the view that during the hearing the fundamental principles of law of the requested State are being infringed, it must immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;
 - (c) measures for the protection of the person to be heard in accordance with the request must be agreed, where necessary, between the Central Authority and the Competent Authority;
 - (d) the hearing must be conducted directly by, or under the direction of, the Central Authority in accordance with Gibraltar law, and where necessary, with the assistance of an interpreter;
 - (e) at the request of the Central Authority or the person to be heard, the Competent Authority must ensure the person to be heard is assisted by an interpreter, if necessary;
 - (f) in advance of the hearing, the person must be informed of the procedural rights which would accrue to them, including the right not to testify, under the law of the requested State and under Gibraltar law;
 - (g) witnesses or expert witnesses may claim the right not to testify which would accrue to them under the law of the requested State or under Gibraltar law.

**Part 5C.
Provisional measures.**

Domestic freezing of evidence orders.

10G.(1) If it appears to a court, on an application made by the person mentioned in subsection (4)—

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- (a) that criminal proceedings have been instituted or a criminal investigation has commenced;
- (b) that there are reasonable grounds to believe that there is evidence in the requested State which satisfies the requirements of subsection (3),

the judge may make a domestic freezing order in respect of the evidence.

(2) A domestic freezing order is an order for protecting evidence which is in a requested State pending its transfer to Gibraltar, and may include any provision with a view to provisionally preventing the destruction, transformation, moving, transfer or disposal of an item that could be used in evidence in any criminal investigation or criminal proceedings.

(3) The requirements are that the evidence—

- (a) is on premises specified in the application in the requested State;
- (b) is likely to be of substantial value (whether by itself or together with other evidence) to the proceedings or investigation;
- (c) is likely to be admissible in evidence at a trial for the relevant offence; and
- (d) does not consist of or include items subject to legal privilege.

(4) An application under this section may be made by the Gibraltar Competent Authority.

(5) This section does not prejudice the generality of the power to make a request under section 9 of the Mutual Legal Assistance (International) Act 2005 or any other enactment.

Sending freezing of evidence orders.

10H.(1) An order made under section 10G is to be sent to the Central Authority for forwarding to the Competent Authority before the end of the period of 14 days beginning with the date when the order was made or, where appropriate, may be sent by the court to the Competent Authority.

(2) The domestic freezing order must be accompanied by a certificate giving the specified information and, unless the certificate indicates when the court expects such a request to be made, by a request under section 9 of the Mutual Legal Assistance (International) Act 2005 for the evidence to be sent to the authority making the request.

(3) The certificate referred to in subsection (2) must be signed by or on behalf of the judge who made the order, and must include a statement as to the accuracy of the information given in it.

- (4) The signature referred to in subsection (3) may be an electronic signature.

Variation or revocation of freezing of evidence orders.

10I.(1) The court that made an order under section 10G may vary or revoke it on an application by a person mentioned in subsection (2).

- (2) The persons are—
- (a) the Gibraltar Competent Authority;
 - (b) any other person affected by the order.

Freezing of evidence orders from requesting States.

10J.(1) Section 10K applies where a freezing order made by a Competent Authority is received by the Central Authority, and the order relates to evidence situated in Gibraltar.

- (2) A freezing of evidence order referred to in subsection (1) is an order—
- (a) to provisionally prevent the destruction, transformation, moving, transfer or disposal of evidence in Gibraltar, pending its transfer to the requesting State, where that evidence could be used in any criminal investigation or criminal proceedings in the requesting State; and
 - (b) in respect of which the requirements of this section are met.
- (3) The order must relate to—
- (a) criminal proceedings instituted in the requesting State in respect of a relevant offence; or
 - (b) a criminal investigation being carried on there into a relevant offence.
- (4) The order must be accompanied –
- (a) by a certificate which gives the specified information, (but a certificate may be treated as giving any specified information which is not given in it if the Central Authority has the information in question);
 - (b) by a request for the evidence to be sent to the Competent Authority in the requested State, unless the certificate indicates when such a request is expected to be made.
- (5) The certificate referred to in subsection (4) must—

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- (a) be signed by or on behalf of the court that made or confirmed the order;
 - (b) include a statement as to the accuracy of the information given in it.
- (6) The signature referred to in subsection (5) may be an electronic signature.
- (7) Where the request referred to in subsection (4)(a) indicates that the evidence is to remain in Gibraltar, the request must also state the date of the lifting of the order.
- (8) References in this Part to a freezing of evidence order from a requesting State include its accompanying certificate.

Considering the order.

10K.(1) Where section 10J applies, the Central Authority must—

- (a) by notice nominate a court in Gibraltar to give effect to the order;
 - (b) send copies of the order to the nominated court and the Gibraltar Competent Authority;
 - (c) inform the Gibraltar Competent Authority which court has been nominated.
- (2) The nominated court is to consider the freezing order on its own initiative within a period prescribed by rules of court.
- (3) Before giving effect to the freezing order, the nominated court must give the Gibraltar Competent Authority an opportunity to be heard.
- (4) The court may decide not to give effect to the freezing order only if, in its opinion, one of the following conditions apply-
- (a) if the person whose conduct is in question were charged in the requesting State with the offence to which the freezing order relates or in Gibraltar with a corresponding offence, the person would be entitled to be discharged under any rule of law relating to previous acquittal or conviction;
 - (b) that giving effect to the freezing order would be incompatible with any of the provisions under the Gibraltar Constitution Order 2006.

Giving effect to the order.

10L.(1) The nominated court is to give effect to the freezing order by issuing a warrant authorising a police officer—

- (a) to enter the premises to which the freezing order relates and search the premises to the extent reasonably required for the purpose of discovering any evidence to which the order relates; and
 - (b) to seize and retain any evidence for which the police officer is authorised to search.
- (2) Where the freezing order relates to excluded material or special procedure material, the court is to give effect to the order by making a production order.
- (3) A production order is an order for the person who appears to the court to be in possession of the material to produce it to a police officer before the end of the period of seven days beginning with the date of the production order or any longer period as the production order may specify.
- (4) The police officer may take away any material produced to them under a production order, and the material is to be treated for the purposes of section 27 of the Criminal Procedure and Evidence Act 2011 (access and copying) as if it had been seized by the police officer.
- (5) If a person fails to comply with a production order, the court may, whether or not it deals with the matter as a contempt of court, issue a warrant under subsection (1) in respect of the material to which the production order relates.

Postponed effect.

10M.(1) The nominated court may postpone giving effect to a freezing order received under section 10J in respect of any evidence—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in Gibraltar; or
 - (b) if, under an order made by a court in criminal proceedings in Gibraltar, the evidence may not be removed from Gibraltar.
- (2) A report on the postponement of the execution of the freezing order, including the grounds for the postponement and, if possible, the expected duration of the postponement must be made to the Competent Authority by any means capable of producing a written record.
- (3) As soon as the ground for postponement has ceased to exist, the Central Authority may apply to the court, for the court to take the necessary measures for the execution of the freezing order, and inform the Competent Authority.

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Evidence seized under the order.

10N.(1) Any evidence seized by a police officer or produced to the police officer under section 10L is to be retained by them until they are ordered by the court under subsection (3), or authorised to release it under section 10O.

(2) If—

(a) the freezing order is accompanied by a request for the evidence to be sent to the Competent Authority; or

(b) the Central Authority subsequently receives a request referred to in paragraph (a),

the Central Authority may apply to the court for an order that the police officer send the evidence to the authority in paragraph (a).

(3) The court may upon an application under subsection (2) order that the evidence seized by the police officer be sent to the Competent Authority.

(4) The court may send the evidence seized directly to the Competent Authority.

Release of evidence held under the order.

10O.(1) On an application made by those mentioned in subsection (2), the nominated court may authorise the release of any evidence retained by a police officer under section 10L if, in its opinion—

(a) the conditions in section 10K(4)(a) or (b) are met; or

(b) the freezing order has ceased to have effect in the requesting State.

(2) The persons are—

(a) the Gibraltar Competent Authority;

(b) any other person affected by the order.

(3) If the court does not make an order under section 10N(2) in respect of any evidence retained by a police officer, it must order the police officer to release the evidence.

Powers under warrants.

10P.(1) A nominated court may not issue a warrant under section 10L in respect of any evidence unless the court has reasonable grounds for believing that it does not consist of or

include items subject to legal professional privilege, excluded material or special procedure material.

(2) Subsection (1) does not prevent a warrant being issued by virtue of section 10L(5) in respect of excluded material or special procedure material.

**Part 5D.
Joint investigation teams.**

Members of a JIT other than competent authorities.

10Q. Where the Minister with responsibility for justice authorises persons other than representatives of a Competent Authority to take part in the activities of a joint investigation team, the rights conferred under Gibraltar law to the members or the seconded members must not apply to these persons unless otherwise expressly agreed.

Duty to pay compensation where seconded member in another State.

10R.(1) If –

- (a) a police officer from the Royal Gibraltar Police is a seconded member;
- (b) in the performance of their functions as a seconded member, that police officer causes any injury, loss or damage in that State,

the Royal Gibraltar Police must pay to the State on request and on provision of satisfactory evidence, an amount equivalent to the sum paid by that State in respect of that injury, loss or damage.

(2) Subsection (1) applies where the Royal Gibraltar Police and a Competent Authority are unable to agree on the sum to be paid for any injury, loss or damage caused by a seconded member in another State.

Duty to pay compensation by other State where seconded member in Gibraltar.

10S.(1) Where in the performance of their functions as a seconded member of a joint investigation team operating in Gibraltar and comprising of members from another State, any injury, loss or damage is caused by that seconded member, the Royal Gibraltar Police must–

- (a) provide satisfactory evidence to that State;
- (b) seek payment from that State of an amount equivalent to the sum paid by that State,

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in respect of that injury, loss or damage.

(2) Subsection (1) applies where the Royal Gibraltar Police and the Competent Authority are unable to agree on the sum to be paid for any injury, loss or damage caused by the seconded member in Gibraltar.

Part 5E Controlled delivery.

Incoming requests.

10T.(1) For the purposes of this Act, “controlled delivery” means the technique of allowing a consignment or any article to pass out of, or through, or into the territory of one or more States-

- (a) with the knowledge of and under the supervision of the competent authorities of all the States which the consignment or article is to pass through or into;
 - (b) where it is reasonably believed that the consignment or any article contains illegal contents;
 - (c) with a view to identifying persons involved in the commission of a relevant offence whether in Gibraltar or elsewhere; and
 - (d) where there is a criminal investigation in connection with a relevant offence that carries a term of imprisonment of more than 12 months.
- (2) The Central Authority may authorise controlled deliveries in, or through Gibraltar.
- (3) An authorisation under this section must—
- (a) be in writing;
 - (b) name the persons taking part in the controlled delivery operation;
 - (c) contain any restrictions and conditions as the Central Authority considers appropriate.
- (4) Where the Central Authority grants an authorisation under subsection (2), the Commissioner of Police or Collector of Customs must in turn by written authority instruct their officers to allow the passage of a consignment or an article.
- (5) Where the Commissioner of Police or Collector of Customs are acting under subsection (4), they must ensure that the next State of transit has been notified and accepts responsibility for the monitoring of the consignment or article, or if it is the State of

destination of the consignment or article that the State will undertake the necessary surveillance up to and including the delivery of the consignment or article.

(6) In any criminal investigation where Gibraltar is the destination of a consignment or an article that is or is reasonably believed to contain illegal contents, where the Commissioner of Police or Collector of Customs are acting under an authorisation from the Central Authority, they may by written authority instruct their officers to allow the delivery of the consignment or article.

(7) Nothing in this section confers any rights on any law enforcement body which is not constituted under the laws of Gibraltar and any operation, to the extent that it is carried out in Gibraltar, must remain under the exclusive command and control of the persons specified in the authorisation.

Outgoing requests.

10U. The Central Authority may seek the consent of a requested State for a controlled delivery to be permitted on, or through, its territory in accordance with the procedures of that requested State.

**Part 5F.
Data protection.**

Definitions.

10V. In this Part-

“the Data Protection Convention” means the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data which was opened for signature on 28 January 1981, as amended from time to time;

“the Gibraltar GDPR” has the same meaning as in section 2 of the Data Protection Act 2004;

“personal data” has the same meaning as in section 2 of the Data Protection Act 2004.

Refusal to transmit.

10W.(1) No personal data may be transmitted or sent as part of the execution of a request from a State where-

- (a) the personal data to which the request relates is protected from disclosure under Gibraltar law; and

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- (b) subject to subsection (2), the requesting State making the request for the transfer of personal data from Gibraltar is not a party to nor has had the Data Protection Convention extended to it.
- (2) The transfer of personal data to the requesting State referred to in subsection (1)(b) may only occur where the data controller in Gibraltar that holds the personal data is satisfied that-
 - (a) the requesting State imposes requirements in its legislation that are equivalent to the Data Protection Act 2004 or the Gibraltar GDPR;
 - (b) the requesting State receiving the personal data is subject to equivalent duties of professional confidentiality and protection of personal data under the Data Protection Act 2004 or the Gibraltar GDPR; and
 - (c) the requesting State agrees to comply with any restrictions or limitations placed by the data controller in Gibraltar on the use of the personal data.

Part 6 General

Authentication of documents.

11.(1) Any evidence or documents transmitted for the purposes of this Act and pursuant to the Convention shall not require any form of authentication.

(2) The Central Authority may transmit certified copies or certified photocopies of records or documents requested, unless the requesting State expressly requests the transmission of originals, in which case the requested State shall make every effort to comply with the request.

Use of information and evidence.

11A. Any information or evidence obtained through a request for assistance, may not, without the consent of the Central Authority, be used for any purpose other than that specified in the request.

Language.

12.(1) Any requests for assistance and annexed documents made to the Central Authority and any answers provided shall be in the English language or accompanied by translations in the English language.

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(1A) If the requesting State knows or has reason to believe that the person to be served with the annexed documents, may not understand the language in which the annexed documents are written, the requesting State must provide in the request-

- (a) a written translation of the annexed documents into a language which the person understands; or
- (b) a written translation of the essential part or parts of the annexed documents.

(1B) The requesting State must ensure the quality of translations so that they accurately describe what is being requested, and in particular, the relevant legal concepts and terms.

(1C) The annexed documents must for the benefit of the requested State be accompanied by a brief summary of its contents translated into the language, or one of the languages of the requested State.

(1D) For the purposes of this section and section 8, “annexed documents” includes judicial decisions, records of judicial decisions and procedural documents.

(1E) Annexed documents must be provided in the language or the languages in which they were issued.

(2) This section is without prejudice to any provisions concerning the translation of requests or annexed documents contained in the agreements or arrangements in force or to be made between Gibraltar and any Contracting State or States.

Confidentiality.

12A.(1) No person may disclose the fact and substance of a request for assistance received by, or made through the Central Authority except for the purposes of executing the request.

(2) Where the confidentiality of a request for assistance under subsection (1) cannot be ensured-

- (a) the Central Authority must promptly inform the requesting State and the requesting State must determine whether, and to what extent, it wishes the request to be executed;
- (b) the Central Authority must communicate with the requested State to determine to what extent it wishes the request to be executed by the requested State.

Costs and expenses.

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13.(1) Unless otherwise agreed with the requesting State or requested State, or where subsection (2) applies, the Central Authority must not claim the expenses and costs of executing requests under the Convention.

(2) The Central Authority may seek the reimbursement of the following costs and expenses from another State-

- (a) costs and expenses incurred by the attendance of experts in Gibraltar, where it is the requested State;
 - (b) costs and expenses incurred by the transfer of a person in custody which is carried out under sections 9 and 9B of this Act;
 - (c) costs and expenses of a substantial or extraordinary nature;
 - (d) costs and expenses incurred for establishing, servicing and operating video-conferencing and telephone conferences in Gibraltar, the remuneration of interpreters used by the requested State, and allowances to witnesses and their travelling expenses under sections 10C and 10E; and
 - (e) the costs and expenses in section 8(8) and (9) of this Act.
- (3) Subsection 2(c) applies to costs and expenses that are both significant and reasonable.
- (4) The Central Authority must consult with the requesting State for the purpose of making arrangements for the payment of costs and expenses under subsection (2)(c) by the requesting State.

Rules of court.

13A. The Chief Justice may make provision by rules of court as to the practice and procedure to be followed in connection with proceedings before a nominated court under this Act.

Regulations.

14. The Minister may by regulation make provision-

- (a) for such matters as are reasonably necessary for or consequential or incidental to the due administration of this Act;
- (b) giving effect to any obligation of the Government arising from the application to Gibraltar of the Convention or any other relevant international obligation which builds upon the Convention including, but not limited to, modifying the

provisions of the Mutual Legal Assistance (International) Act 2005 as extended by this Act.

Immunity.

15. The Government and the Central Authority shall not be liable in damages for anything done or omitted in the discharge of their functions under this Act, unless it is shown that the act or omission was in bad faith.

Relationship with other legislation.

16. Nothing in this Act shall affect the provision of assistance under the Mutual Legal Assistance (International) Act 2005 or any other enactment.

Mutual legal assistance arrangements with the United Kingdom.

17. The Government may, by regulations, make provision extending to the United Kingdom in whole or in part the provisions of this Act either with or without modifications.

Power to amend the Act to implement conventions and international agreements.

18.(1) The Minister may, by regulations, amend this Act for the purpose of implementing in Gibraltar-

- (a) an international agreement or convention; or
- (b) any other international obligations or standards concerned with the Convention; or
- (c) the recommendations (however described) of international bodies that are involved with the adoption, monitoring or promotion of such obligations or standards.

(2) Regulations made under subsection (1) may contain such consequential, supplementary, incidental and transitional provisions as the Minister considers it necessary or expedient.

**Part 7
TGEU**

Application of the Mutual Legal Assistance (International) Act 2005 and Parts 1 to 6 of this Act.

19.(1) In respect of a request received under Articles 152 to 161-

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- (a) where the Mutual Legal Assistance (International) Act 2005 makes provision for a request of that kind, the Mutual Legal Assistance (International) Act 2005 applies with the necessary modifications;
 - (b) where the Mutual Legal Assistance (International) Act 2005 does not make provision for the request received, but Parts 1 to 6 of this Act do make provision for the request, Parts 1 to 6 of this Act apply with the necessary modifications;
 - (c) where both the Mutual Legal Assistance (International) Act 2005 and Parts 1 to 6 of this Act do not apply to a request received, this Part applies.
- (2) Any provision in this Act that is inconsistent with the TGEU does not apply for the purposes of a request under Articles 152 to 161.
- (3) In giving full effect to the TGEU, due regard must be given to the objective under Article 152.
- (4) The provisions in Part Two, Title V Chapter 4 take precedence over the provisions under this Act that give effect to Articles 152 to 161.

Conditions for a request and consultation.

20.(1) A request under Articles 152 to 161 may only be made by the Central Authority if the following conditions are met, namely that-

- (a) the request is necessary and proportionate to the proceedings, taking into account the rights of the suspect or the defendant; and
 - (b) the measures indicated in the request could be ordered under the same conditions in a similar domestic case.
- (2) A request under Articles 152 to 161 may only be made by a court, judge or justice of the peace if the following conditions are met-
- (a) the request is necessary and proportionate to the proceedings, taking into account the rights of the suspect or the defendant; and
 - (b) the measures indicated in the request could be ordered under the same conditions in a similar domestic case.
- (3) Where a request is sent pursuant to subsections (1) or (2) to a Competent Authority, the Central Authority may engage in consultations with the Competent Authority.

Consultation for request from Competent Authority.

21. Where the Central Authority receives a request from a Competent Authority, and the Central Authority is of the view that the conditions in section 20(1) are not met, they may consult the Competent Authority.

Recourse to a different type of measure.

22.(1) Subsections (2) to (7) apply where a request indicates or contains a measure that-

- (a) does not exist under Gibraltar law; or
- (b) is not available in a similar domestic case.

(2) Where subsection (1) applies, consideration must be given to a measure other than that indicated in a request.

(3) The-

- (a) Central Authority; or
- (b) court, judge or justice of the peace,

may have recourse to a measure other than that indicated in the request, where the measure selected by the Central Authority, or the court, judge or justice of the peace would achieve the same result by less intrusive means than the measure indicated in the request.

(4) Where the-

- (a) Central Authority; or
- (b) the court, judge or justice of the peace,

decide to have recourse to a measure other than the one indicated in a request referred to in subsection (1), it must first inform the Competent Authority.

(5) The-

- (a) Central Authority; or
- (b) court, judge or justice of the peace,

must notify the Competent Authority that it is not possible to execute the request where-

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- (i) the measure indicated in the request from the requesting State does not exist under Gibraltar law or would not be available in a domestic case; and
- (ii) there is no other measure that can be applied which would have the same result as the measure requested.

(6) Without prejudice to the grounds for refusal under the Convention and under section 24, requests for the following measures must not be refused where a request is received from a Competent Authority for–

- (a) the obtaining of information contained in databases held by the Royal Gibraltar Police or the judicial authorities and directly accessible by the competent authorities in Gibraltar within the framework of criminal proceedings;
- (b) the hearing of a witness, expert, suspect, defendant or third party in Gibraltar;
- (c) any non-coercive measure as defined under Gibraltar law; and
- (d) the identification of persons holding a subscription of a specified phone number or IP address.

(7) For the purposes of the TGEU, a “non-coercive measure” means when a request does not require a warrant or an order to provide the assistance sought.

Obligation to inform.

23. The Central Authority must, by any means and without due delay, inform the Competent Authority where–

- (a) it is impossible to execute a request from the Competent Authority, due to the fact that the request is incomplete or manifestly incorrect; or
- (b) it is considered that without further enquiries it may be appropriate to carry out the measures not initially foreseen, or which could not be specified when the request was made, to enable the requesting State to take further action in the specific case.

Grounds of refusal.

24.(1) In addition to the grounds of refusal under the Convention, a request under the TGEU may be refused where the execution of the request would be contrary to the principle of *ne bis in idem* and this includes, but is not limited to, where–

- (a) a person is the subject of criminal investigations, criminal proceedings or other proceedings, including judicial proceedings in the requesting State; and
- (b) there is a decision or judgment from a court in Gibraltar, in a Member State, or in the United Kingdom in respect of the same acts as those in the investigations or proceedings referred to in paragraph (a),

provided that if a penalty or a sentence is imposed in Gibraltar, in the Member State or in the United Kingdom-

- (i) it has been fully enforced;
- (ii) it is in the process of being enforced; or
- (iii) it can no longer be enforced under Gibraltar law, English law or the law of the Member State.

Joint investigation teams.

25. Where a joint investigation team is set up in Gibraltar under the Joint Investigation Teams Regulations 2014, Council Framework Decision 2002/465/JHA of 13 June 2002, as amended or replaced, applies between Member States and for the purposes of Article 20 of the Second Additional Protocol.

SCHEDULE

Sections 10C and 10E.

PART 1

EVIDENCE GIVEN BY VIDEOCONFERENCE

1. The evidence is to be given in accordance with the laws of the requesting State, and with any measures for the protection of witnesses agreed under section 10A.
2. The witness cannot be compelled to give any evidence which they cannot be compelled to give in criminal proceedings in Gibraltar.
3. The witness cannot be compelled to give any evidence if their doing so would be prejudicial to the security of Gibraltar.
4. A certificate signed by or on behalf of the Governor to the effect that it would be prejudicial for that witness or expert witness to give evidence is to be conclusive evidence of that fact.
5. The witness or expert witness cannot be compelled to give any evidence in their capacity as an officer or servant of the Crown.
6. Paragraphs 3 and 5 are without prejudice to the generality of paragraph 2.
7. Any rules of court made under section 13A must make provision-
 - (a) for the drawing up of a record of the hearing;
 - (b) for sending the record to the Requesting State.

PART 2

EVIDENCE GIVEN BY TELEPHONE

1. The witness is to give evidence in the presence of the nominated court.
2. The evidence is to be given under the supervision of the court of the Requesting State.
3. The evidence is to be given in accordance with the laws of the Requesting State.
4. Any rules of court that are made under section 13A must make provision for the use of interpreters.