

# **2005-32** Mutual Legal Assistance (International)

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Subsidiary Legislation made under s.25(1) and (3).

## **Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024**

**LN.2024/211**

*Commencement*      **28.11.2024**

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**SCHEDULE**

*In exercise of the powers conferred on the Minister by section 25(1) and (3) of the Mutual Legal Assistance (International) Act 2005, the Minister has made the following Regulations-*

**PART 1  
PRELIMINARY**

**Title.**

1. These Regulations may be cited as the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024.

**Commencement.**

2. These Regulations come into operation on the day of publication.

**Interpretation.**

3. In these Regulations-

“Act” means the Mutual Legal Assistance (International) Act 2005;

“competent authority” means in relation to a request which concerns a contracting State, that is not Gibraltar-

(a) a court exercising jurisdiction in the place which relates to the request; or

(b) any other authority recognised by the Central Authority, as the appropriate authority for dealing with requests of that kind;

“contracting State” means the Kingdom of Morocco or Gibraltar;

“Central Authority” has the same meaning as in section 2 of the Act;

“Convention” means the Convention on Mutual Legal Assistance in Criminal Matters between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Morocco, signed in London on the 15<sup>th</sup> April 2013;

“criminal investigation” means a criminal investigation commenced in respect of an offence under the law of a contracting State;

“criminal proceeding” has the same meaning as in section 2 of the Act;

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“offence” means an offence to which the Convention applies, and this includes fiscal offences;

“request” means a request for assistance under the Convention;

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

### **Application.**

4.(1) A request may be made by the Central Authority or received from a competent authority if-

- (a) the request relates to an offence; and
- (b) assistance falls within the scope of-
  - (i) the Act; or
  - (ii) these Regulations; or
  - (iii) both.

(2) Nothing in subregulation (1) affects the ability to make or receive requests under any other enactment.

## **PART 2 MODIFICATIONS IN LEGISLATION**

### **Modification of the Act.**

5.(1) For the purposes of giving effect to a request, the Act shall be deemed to be modified in accordance with this regulation.

(2) In section 2-

- (a) substitute the definition of “offence” for-

““offence” has the same meaning as in regulation 3 of the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024;”;

(b) in the definition of “State”, after subparagraph (ii) insert-

“(aa) that has ratified the Convention or a territory covered by the ratification, and where the context so requires, Gibraltar is deemed to be a State; or”.

(3) For section 3(2) substitute-

“(2) A request may be refused by the Central Authority on any of the following grounds-

- (a) the request concerns a political offence, or an offence under military law;
- (b) there are substantial grounds for believing that the request has been made for the purpose of investigating, prosecuting or punishing a person on account of that person’s race, sex, religion, nationality, ethnic origin or political opinions, or that the person’s position may be prejudiced for any of those reasons;
- (c) the request relates to a person who, if proceeded against in the requested State for the offence stated in the request, would be entitled to be discharged on the grounds of a previous acquittal or conviction;
- (d) if the execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Gibraltar;
- (e) the execution of the request is inconsistent with Gibraltar law;
- (f) the request would, or would be likely to prejudice an investigation or criminal proceeding in the requested State or endanger the safety of any person.”.

(4) After section 3(2) insert-

“(2A) A request must not be refused solely on the ground that the request relates to a fiscal offence, or on the basis of confidentiality.”.

(5) For section 4 substitute-

**“Requests for assistance.**

4.(1) Requests for assistance under sections 18, 19 or 21 must be effected through the competent authority in the requesting State or territory.

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(2) For the purposes of this Act, “competent authority” has the same meaning as in regulation 3 of the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024.

(3) A request-

- (a) received by the Central Authority under the Convention; or
- (b) sent by the Central Authority under the Convention,

must comply with the provisions of the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024 and this Act.

(4) For the purposes of this Act, “the Convention” means Convention on Mutual Legal Assistance in Criminal Matters between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Morocco, signed in London on the 15<sup>th</sup> April 2013.

#### **Form of request and language.**

4A.(1) Subject to subsection (2), requests 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 a request.

(2) A request may-

- (a) in an urgent case; and
- (b) subject to the prior agreement of the authority to whom the request is made, be made in oral form, and if made orally, must be confirmed by a means that is capable of producing a written record within 30 days from receipt of the request, unless the requested State agrees otherwise.

(3) Subject to section 5(2) and 7(3), all requests, supporting documents and any communication made under the Convention must be written in the language of the requesting State, and must be accompanied by a translation in the language of the requested State.

#### **Content of request.**

4B.(1) A request under the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024, sent to the Central Authority must contain-

- (a) the name and address of the authority in the requesting State making the request;
- (b) the subject matter and nature of the criminal investigation or criminal proceeding to which the request relates;
- (c) a description of the offence to which the request relates, including the applicable penalty;
- (d) a summary of the relevant facts in support of the request;
- (e) the purpose for which the evidence, information or action is sought;
- (f) a description of the evidence or assistance sought; and
- (g) details of any time period within which compliance with the request is required.

(2) To the extent that it is necessary and possible, a request must also include-

- (a) the identity, exact location, residence, last known address and nationality of any person from whom evidence is sought;
- (b) the identity, exact location, residence, last known address and nationality of any person to be served, that person's relationship to the proceedings, and the manner in which service is to be effected;
- (c) information on the identity and location of a person that needs to be located;
- (d) a detailed description of any place to be searched and of any articles to be seized;
- (e) a description of the manner in which any evidence from any person is to be taken and recorded;
- (f) a list of questions to be asked of a witness or expert;
- (g) a description of any particular procedure to be followed when executing a request;

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- (h) details as to the costs and expenses to which a person requested to appear in the requesting State is entitled;
  - (i) any requirements for confidentiality;
  - (j) any other information that may be provided to facilitate the execution of the request.
- (3) Where the request involves the temporary transfer of prisoners under section 18, the attendance of persons outside Gibraltar under regulation 22, the attendance of persons in Gibraltar under regulation 23, or the transfer of person in custody to give evidence or assist in Gibraltar under regulation 24 of the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024, the request must include information on the extent of immunity, if any, to be afforded to the person while they are in the requesting State.”.
- (6) Omit section 12(4).
- (7) Insert after section 14(2)-
- “(3) Upon the request of the requesting State, the Central Authority must petition the court to state the date and place of execution of the request.
- (4) Where the Central Authority consents, officials and interested persons from the requesting State may be present at the examination of witnesses, and where appropriate, at the execution of other requests under this Act.
- (5) The Central Authority may, as part of the request, seek an order from the Court that any witness provide any evidence or documents.
- (6) The court may grant an order for the production of any evidence or documents, upon the application of the Central Authority.
- (7) Any person that is summoned to attend court to give evidence or produce any documents may assert a claim of immunity, incapacity or privilege under the law of the requesting State.”.
- (8) After section 15(2) insert-



- “(3) A request under section 13 must be granted where the request contains information that would justify the exercise of the powers under Part 2 of the Criminal Procedure and Evidence Act 2011.
- (4) The Commissioner of Police must provide information as may be required by the requesting State concerning-
- (a) the result of any search;
  - (b) the place of seizure;
  - (c) the circumstances of the seizure;
  - (d) the subsequent custody of the evidence that is seized.
- (5) The Central Authority may require that the competent authority agree to any terms and conditions which it may deem necessary to protect the proprietary interests in the evidence that is seized.
- (6) Where a request for assistance is made by the Central Authority under section 9 of the Act, the Central Authority may request from the requested State-
- (a) the result of any search;
  - (b) the place of seizure;
  - (c) the circumstances of the seizure;
  - (d) the subsequent custody of the evidence that is seized.
- (7) In the case of a request under section 9, which is granted by the requested State, the Central Authority may agree with the requested State any terms and conditions which the requested State may deem necessary to protect the proprietary interest of any evidence that is seized.”.
- (9) In section 18-
- (a) omit-
  - (i) “and” in subsection (1)(d);

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- (ii) the full stop after subsection (1)(e), and substitute with “; and”;
- (b) insert after subsection (1)(e)-
  - “(f) the person is not the person being investigated or charged”.
- (10) In Schedule 1 of the Act-
  - (a) in paragraph 3(2) after “evidence” insert, “for any of the reasons provided in section 14(7),”;
  - (b) after paragraph 3(5) insert-
    - “(5A) A person from whom evidence is to be taken in Gibraltar, and who declines to give testimony or produce evidence where Gibraltar law so provides whether under subparagraphs (1), (4), (5) or otherwise, must not be subject to any penalty as a result.”;
  - (c) omit paragraph 4(5).

### **Modification of the Proceeds of Crime Act 2015 (External Investigations Ancillary to a Criminal Investigation or Proceeding) Order 2019.**

6.(1) For the purposes of giving effect to a request, the Proceeds of Crime Act 2015 (External Investigations Ancillary to a Criminal Investigation or Proceeding) Order 2019 is deemed to be modified in accordance with the provisions of this regulation.

- (2) Insert after article 4-

#### **“Refusal.**

4A.(1) Assistance under this Order may be refused where-

- (a) the request concerns a political offence, or an offence under military law;
- (b) there are substantial grounds for believing that the request has been made for the purpose of investigating, prosecuting or punishing a person on account of that person’s race, sex, religion, nationality, ethnic origin or political opinions, or that the person’s position may be prejudiced for any of those reasons;

- (c) the request relates to a person who, if proceeded against in the requested State for the offence stated in the request, would be entitled to be discharged on the grounds of a previous acquittal or conviction;
  - (d) the execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Gibraltar;
  - (e) the execution of the request is inconsistent with Gibraltar law;
  - (f) the request would, or would be likely to prejudice an investigation or criminal proceeding in the requested State or endanger the safety of any person.
- (2) A request must not be refused under paragraph (1) solely on the ground that the request relates to a fiscal offence, or on the basis of confidentiality.
- (3) Where a request is refused under paragraph (1), reasons must be provided to the requesting State making the request.
- (4) In this Order-
- (a) “a requesting State” or a “requested State” means a State that has ratified the Convention or a territory covered by the ratification; and
  - (b) “Convention” means the Convention on Mutual Legal Assistance in Criminal Matters between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Morocco, signed in London on the 15<sup>th</sup> April 2013.

**Content of request.**

4B.(1) Notwithstanding any other applicable requirements under this Order, a request under the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024, sent to the Central Authority must contain-

- (a) the name and address of the authority in the requesting State making the request;
- (b) the subject matter and nature of the criminal investigation or criminal proceeding to which the request relates;

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- (c) a description of the offence to which the request relates, including the applicable penalty;
  - (d) a summary of the relevant facts in support of the request;
  - (e) the purpose for which the evidence, information or action is sought;
  - (f) a description of the evidence or assistance sought; and
  - (g) details of any time period within which compliance with the request is required.
- (2) To the extent that it is necessary and possible, a request must also include-
- (a) the identity, exact location, residence, last known address and nationality of any person from whom evidence is sought;
  - (b) the identity, exact location, residence, last known address and nationality of any person to be served, that person's relationship to the proceedings, and the manner in which service is to be effected;
  - (c) information on the identity and location of a person that needs to be located;
  - (d) a detailed description of any place to be searched and of any articles to be seized;
  - (e) a description of the manner in which any evidence from any person is to be taken and recorded;
  - (f) a list of questions to be asked of a witness or expert;
  - (g) a description of any particular procedure to be followed when executing a request;
  - (h) details as to the costs and expenses to which a person requested to appear in the requesting State is entitled;
  - (i) any requirements for confidentiality;
  - (j) any other information that may be provided to facilitate the execution of the request.

**Language of request.**

4C. All requests, supporting documents and any communication made under the Convention must be written in the language of the requesting State, and must be accompanied by a translation in the language of the requested State.

**Application of the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024.**

4D. A request-

- (a) received by the Central Authority under the Convention; or
- (b) sent by the Central Authority under the Convention,

must comply with the provisions of the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024 and this Order.”.

**Modification of the Proceeds of Crime Act 2015 (External Investigations in a Civil Context) Order 2019.**

7.(1) For the purposes of giving effect to a request, the Proceeds of Crime Act 2015 (External Investigations in a Civil Context) Order 2019 is deemed to be modified in accordance with the provisions of this regulation.

(2) Insert after Article 4-

**“Refusal.**

4A.(1) Assistance under this Order may be refused where-

- (a) the request concerns a political offence, or an offence under military law;
- (b) there are substantial grounds for believing that the request has been made for the purpose of investigating, prosecuting or punishing a person on account of that person’s race, sex, religion, nationality, ethnic origin or political opinions, or that the person’s position may be prejudiced for any of those reasons;
- (c) the request relates to a person who, if proceeded against in the requested State for the offence stated in the request, would be entitled to be discharged on the grounds of a previous acquittal or conviction;

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- (d) the execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Gibraltar;
  - (e) the execution of the request is inconsistent with Gibraltar law;
  - (f) the request would, or would be likely to prejudice an investigation or criminal proceeding in the requested State or endanger the safety of any person.
- (2) A request must not be refused under paragraph (1) solely on the ground that the request relates to a fiscal offence, or on the basis of confidentiality.
- (3) Where a request is refused under paragraph (1), reasons must be provided to the requesting State making the request.
- (4) In this Order-
- (a) “a requesting State” or a “requested State” means a State that has ratified the Convention or a territory covered by the ratification; and
  - (b) “Convention” means the Convention on Mutual Legal Assistance in Criminal Matters between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Morocco, signed in London on the 15<sup>th</sup> April 2013.

### **Content of request.**

- 4B.(1) Notwithstanding any other applicable requirements under this Order, a request under the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024, sent to the Central Authority must contain-
- (a) the name and address of the authority in the requesting State making the request;
  - (b) the subject matter and nature of the criminal investigation or criminal proceeding to which the request relates;
  - (c) a description of the offence to which the request relates, including the applicable penalty;
  - (d) a summary of the relevant facts in support of the request;

- (e) the purpose for which the evidence, information or action is sought;
  - (f) a description of the evidence or assistance sought; and
  - (g) details of any time period within which compliance with the request is required.
- (2) To the extent that it is necessary and possible, a request must also include-
- (a) the identity, exact location, residence, last known address and nationality of any person from whom evidence is sought;
  - (b) the identity, exact location, residence, last known address and nationality of any person to be served, that person's relationship to the proceedings, and the manner in which service is to be effected;
  - (c) information on the identity and location of a person that needs to be located;
  - (d) a detailed description of any place to be searched and of any articles to be seized;
  - (e) a description of the manner in which any evidence from any person is to be taken and recorded;
  - (f) a list of questions to be asked of a witness or expert;
  - (g) a description of any particular procedure to be followed when executing a request;
  - (h) details as to the costs and expenses to which a person requested to appear in the requesting State is entitled;
  - (i) any requirements for confidentiality;
  - (j) any other information that may be provided to facilitate the execution of the request.

**Language of request.**

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4C. All requests, supporting documents and any communication made under the Convention must be written in the language of the requesting State, and must be accompanied by a translation in the language of the requested State.

**Application of the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024.**

4D. A request-

- (a) received by the Central Authority under the Convention; or
- (b) sent by the Central Authority under the Convention,

must comply with the provisions of the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024 and this Order.”.

**Modification of the Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019.**

8.(1) For the purposes of giving effect to a request made under the Convention, the Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019 is deemed to be modified in accordance with this regulation.

(2) Insert after Article 5-

**“Refusal.**

5A. Assistance under this Order may be refused-

- (a) the request concerns a political offence, or an offence under military law;
- (b) there are substantial grounds for believing that the request has been made for the purpose of investigating, prosecuting or punishing a person on account of that person’s race, sex, religion, nationality, ethnic origin or political opinions, or that the person’s position may be prejudiced for any of those reasons;
- (c) the request relates to a person who, if proceeded against in the requested State for the offence stated in the request, would be entitled to be discharged on the grounds of a previous acquittal or conviction;



- (d) the execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Gibraltar;
  - (e) the execution of the request is inconsistent with Gibraltar law;
  - (f) the request would, or would be likely to prejudice an investigation or criminal proceeding in the requested State or endanger the safety of any person.
- (2) A request must not be refused under paragraph (1) solely on the ground that the request relates to a fiscal offence, or on the basis of confidentiality.
- (3) Where a request is refused under paragraph (1), reasons must be provided to the requesting State making the request.
- (4) In this Order-
- (a) “a requesting State” or a “requested State” means a State that has ratified the Convention, or a territory that is covered by the ratification; and
  - (b) “Convention” means the Convention on Mutual Legal Assistance in Criminal Matters between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Morocco, signed in London on the 15<sup>th</sup> April 2013.

**Content of request.**

5B.(1) Notwithstanding any other applicable requirements under this Order, a request under the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024, sent to the Central Authority must contain-

- (a) the name and address of the authority in the requesting State making the request;
- (b) the subject matter and nature of the criminal investigation or criminal proceeding to which the request relates;
- (c) a description of the offence to which the request relates, including the applicable penalty;
- (d) a summary of the relevant facts in support of the request;

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- (e) the purpose for which the action is sought;
- (f) a description of the assistance sought;
- (g) details of any time period within which compliance with the request is required;
- (h) in the case of a request under Article 17 of the Convention-
  - (i) details of the property in respect of which cooperation is sought;
  - (ii) the location of the property;
  - (iii) the connection of the property with the subjects of the request;
  - (iv) details of any connection between the property and the offence;
  - (v) details of any third party interests in the property;
  - (vi) a certified true copy of any order for restraint or confiscation made by the court in the requesting State, together with a statement of the grounds on the basis of which the order was made, if these grounds are not indicated in the order itself;
  - (vii) a statement as to the extent to which the execution of any order is requested;
  - (viii) a statement specifying the measures taken by the requesting State to provide adequate notification to bona fide third parties and to ensure that any bona fide third parties have been afforded a fair hearing;
  - (ix) a statement that the order is a final order and there is no prospect of appeal, or that the time for filing an appeal has expired;
  - (x) a description of the actions requested.
- (2) To the extent that it is necessary and possible, a request must also include-
  - (a) the identity, exact location, residence, last known address and nationality of any person to be served, that person's relationship to the proceedings, and the manner in which service is to be effected;

- (b) a detailed description of any place to be searched and of any articles to be seized;
- (c) a description of any particular procedure to be followed when executing a request;
- (d) any requirements for confidentiality;
- (e) any other information that may be provided to facilitate the execution of the request.

**Language of request.**

4C. All requests, supporting documents and any communication made under the Convention must be written in the language of the requesting State, and must be accompanied by a translation in the language of the requested State.

**Application of the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024.**

4D. A request-

- (a) received by the Central Authority under the Convention; or
- (b) sent by the Central Authority under the Convention,

must comply with the provisions of the Mutual Legal Assistance (International) (Convention with Morocco) Regulations 2024 and this Order.”.

**PART 3**

**ADDITIONAL INFORMATION, POSTPONEMENT AND RELATED MATTERS**

**Additional information.**

9. If the Central Authority considers that the information in a request received from a requesting State is not sufficient for the purposes of the Convention, the Central Authority may request that State to provide additional information.

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### **Postponement.**

10.(1) The execution of a request may be postponed by the Central Authority until such time as the Central Authority deems reasonable, where the execution of the request might prejudice a criminal proceeding in Gibraltar.

(2) If it is likely that a request is to be postponed under subregulation (1) or refused, the Central Authority must consult the requesting State to consider whether assistance may be granted subject to such terms and conditions as it deems necessary, and, if the requesting State accepts assistance subject to those terms and conditions, the request may be acted on by the Central Authority subject those terms and conditions.

(3) Where the Central Authority decides to refuse or postpone the request, it must promptly inform the requesting State of the reasons for the refusal or postponement.

### **Delay in assistance.**

11. Where it is not possible to achieve a timely execution of a request, the Central Authority must-

- (a) without delay, inform the requesting State, by any means, giving the reasons for the delay; and
- (b) consult the requesting State on the time required to carry out the request.

### **Confidentiality and limitation on use.**

12.(1) Except to the extent that-

- (a) there is an obligation under the law of the requesting State; or
- (b) it is necessary to execute the request,

the fact and substance of a request received by or made by or through the Central Authority must not be disclosed by any person, other than in the course of the exercise of their duties.

(2) Where in relation to a request, it is not possible to comply with the requirement of confidentiality set out in subregulation (1)-

- (a) the Central Authority must promptly inform the requesting State, where the Central Authority receives a request;

(b) the requested State must promptly inform the Central Authority, where the Central Authority has sent a request.

(3) Where subregulation (2) applies, the requesting State must inform the requested State whether, and to what extent, it wishes the request to be executed.

(4) Any evidence or information obtained by a requesting State through a request may not, without the prior consent of the Central Authority, be used for any other purpose other than that specified in the request.

(5) Where subregulation (4) applies, this does not preclude the use of information where there is an obligation under the law of the requesting State to use the information, provided that-

(a) the requesting State notifies the Central Authority before any disclosure is made, and if so requested, must consult with the Central Authority; and

(b) where advance notice is not possible, the requesting State must inform the Central Authority of the disclosure without delay.

**Certification.**

13.(1) Save as otherwise provided under these Regulations, any request or document transmitted for the purposes of these Regulations, does not require any form of legalisation.

(2) Information or evidence transmitted by the Central Authority to the requesting State must only be certified by the Central Authority if the requesting State so requests.

(3) Where the Central Authority sends a request under the Convention, it may ask the competent authority to certify any information or evidence transmitted by the requested State under the request.

**Return of evidence.**

14.(1) Where evidence from a requested State is no longer required by the Central Authority with respect to a request, or for any other purpose for which consent has been obtained, it must be returned by the Central Authority to the requested State, unless the requested State waives this requirement.

(2) If the requested State does not require the return of any evidence, the requested State and the Central Authority must agree to dispose of the evidence in an acceptable manner.

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(3) Where evidence sent to a requesting State is no longer required by that State with respect to a request, or for any other purpose for which consent has been obtained, the Central Authority may request its return.

(4) If the Central Authority does not require the return of the evidence, the Central Authority and the requesting State must agree to dispose of the evidence in an acceptable manner.

#### **PART 4 DATA PROTECTION**

##### **Definitions.**

15. 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.**

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

- (a) the personal data to which the request relates is protected from disclosure under Gibraltar law; and
- (b) subject to subregulation (2), the requesting State making the request for the transfer of personal data from Gibraltar is not a party to the Data Protection Convention.

(2) The transfer of personal data to the requesting State referred to in subregulation (1)(b) may 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 competent authority 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) that 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 5**  
**HEARING EVIDENCE THROUGH VIDEOCONFERENCE**

**Hearing by videoconference- incoming request.**

17.(1) This regulation applies where the Central Authority receives a request from a competent authority for the hearing of a witness or expert witness by videoconference or other audiovisual transmission and where the following conditions are satisfied-

- (a) there are criminal proceedings in the requesting State;
- (b) the witness or expert witness, as the case may be, is present in Gibraltar;
- (c) the attendance in person of that witness or expert witness at the criminal proceedings is not possible or desirable;
- (d) that a hearing through videoconference is permitted under the law of the requesting State and under Gibraltar law.

(2) For the purposes of this regulation and regulation 18, “witness” or “expert witness” does include a person accused of having committed an offence or accused in criminal proceedings, but not in relation to the trial of that person.

(3) The request sent to the Central Authority from a competent authority must contain-

- (a) details of the person making the request;
- (b) the object of and the reason for the request;
- (c) where possible, the identity and nationality of the person who is the subject of the request;
- (d) where necessary, the name and address of the person to be served with a summons;
- (e) the names of the persons who will be conducting the hearing;

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- (f) the reasons why it is not desirable or possible for the witness or expert witness to attend the hearing in person;
  - (g) a written statement from the witness or expert witness consenting to the hearing by videoconference or other audiovisual transmission.
- (4) 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;
  - (b) make arrangements with the court where the person is to be heard;
  - (c) direct any authorised person to attend to any arrangements on its behalf.
- (5) Subject to subregulation (7), the nominated court must-
- (a) agree the practical arrangements with the competent authority; and
  - (b) on the application of an authorised person, issue an order that the witness or expert witness, who is the subject of the request, to 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.
- (6) 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 subregulation (1) as agreed with the competent authority.
- (7) Before acceding to a request under subregulation (5) 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 subregulation is not contrary to the fundamental principles of Gibraltar law.
- (8) The written statement referred to in subregulation (3)(g) must be in the English language, and if not in the English language, must be accompanied by an English translation.
- (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 shall 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) at the request of the competent authority or the person to be heard, the nominated court must ensure the person to be heard is assisted by an interpreter, if necessary;
  - (f) at the request of the competent authority, the hearing must be supervised by the competent authority and evidence must be given-
    - (i) in accordance with the law of the requesting State; and
    - (ii) in accordance with any measures for the protection of witnesses agreed by the parties under regulation 20;
  - (g) in advance of the hearing, the person to be heard may claim the right not to testify which would accrue to them under the law of the other contracting State or under Gibraltar law.
- (10) Without prejudice to any measures which may have been introduced under subregulation (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

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- (e) the technical conditions under which the hearing took place, and the nominated court must forward these minutes to the competent authority.
- (11) 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.
- (12) Any statement made on oath by the person to be heard under this regulation 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.
- (13) The Schedule to these Regulations has effect.
- (14) Subject to subregulations (11) and (12) and the provisions of the Schedule, evidence given in accordance with this regulation is not to be treated for any purpose as evidence given in proceedings in Gibraltar.
- (15) For the purposes of this regulation and regulation 18, an “authorised person” means-
- (a) the Director of Public Prosecutions;
  - (b) Crown Counsels; and
  - (c) any other persons or body as the Minister may designate by notice in the Gazette.
- (16) Where the Central Authority considers it inappropriate to nominate a court under subregulation (4)-
- (a) the Central Authority must comply with the relevant requirements under the Convention; and
  - (b) the provisions in this regulation apply subject to any modifications as are necessary.

#### **Hearing by videoconference – outgoing requests.**

18.(1) Where-

- (a) there are criminal proceedings in Gibraltar;
- (b) a witness or an expert witness, as the case may be, is present in the requested State;

- (c) the attendance in person of that witness or expert witness before a court in Gibraltar is not possible or desirable, an authorised person may apply to the court for it to issue a request to the requested State for the hearing of that witness or expert witness by videoconference or other audiovisual transmission;
  - (d) a hearing by videoconference is permitted under the laws of the requested State and Gibraltar.
- (2) If satisfied that the requirements in subregulation (3) are met, and upon the application of an authorised person, a judge or justice of the peace may issue a request under this regulation to the competent authority for the hearing of a witness or expert witness by videoconference or other audiovisual transmission.
- (3) The requirements referred to in subregulation (2) are that-
- (a) the person named in the application has made a written statement consenting to hearing by videoconference or other audio visual transmission;
  - (b) the execution of the request is not contrary to the fundamental principles of Gibraltar law.
- (4) If the judge or justice of the peace grants the application and makes the request to the competent authority in the requested State, the Central Authority, or the authorised person when directed by the Central Authority, must communicate with the competent authority to agree the practical arrangements for the hearing and this includes-
- (a) advising the witness or expert witness of the time, the date and the venue at which the person may 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 a request under subregulation (2), and a hearing is 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;

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- (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, they 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 supervised by the Central Authority or the authorised person and evidence must be given-
  - (i) in accordance with the law of the requesting State; and
  - (ii) in accordance with any measures for the protection of witnesses agreed by the parties under regulation 21;
- (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; and
- (g) in advance of the hearing, 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.

### **Agreement for alternative means or technical means.**

19.(1) The Government may assist the requesting State with the technical means for videoconferencing where this is not available in the requesting State.

(2) Where subregulation (1) applies, the requesting State must be responsible for the costs to be incurred by the Government.

## **PART 6 PROTECTION OF WITNESSES**

### **Protection of persons in Gibraltar.**

20.(1) Without prejudice to any other provision under Gibraltar law, where a competent authority makes a request under these Regulations in relation to a witness and this witness is-

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

the Central Authority, with the assistance of the Commissioner of Police, must endeavour to agree measures with the competent authority for the protection of the witness concerned.

(2) In this regulation and regulation 21-

“witness” means any person, irrespective of their status under Gibraltar law, who possesses information relevant to criminal proceedings or criminal investigations, and this includes victims, experts, as well as interpreters;

“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 subregulation (1), the Commissioner of Police may make any arrangements under these Regulations or under any other enactment to protect a person that falls under subregulation (1).

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

(5) The Commissioner of Police may vary or cancel any arrangements made by virtue of subregulation (1) if it is considered appropriate to do so on the request of the witness or competent authority, or on its own initiative.

(6) Any arrangements made under subregulations (1) or (2) must be recorded by the Commissioner of Police, together with any variation or cancellation of these arrangements.

(7) Any arrangements that are made under this regulation must take into account the capabilities of the Central Authority and Commissioner of Police.

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

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#### **Protection of persons in a requested State.**

21.(1) Where the Central Authority makes request under these Regulations 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 Commissioner of Police, must request measures from the competent authority for the protection of the witness concerned.

(2) Where appropriate, the Central Authority, with the Commissioner of Police may request that any measures made by the competent authority be cancelled or varied.

#### **PART 7 ATTENDANCE OF PERSONS AND TRANSFER OF PERSONS**

#### **Attendance of persons outside Gibraltar.**

22.(1) Where a person is situated in Gibraltar, the Central Authority may assist in arranging the attendance of that person, subject to the person's consent, in the requesting State-

- (a) to assist in a criminal investigation;
- (b) to appear in criminal proceedings in the requesting State, unless that person is the person charged,

upon a request being received by the Central Authority from the requesting State.

(2) Section 20(1) of the Mutual Legal Assistance (International) Act 2005 applies to this regulation.

(3) The request from the requesting State must include information on the extent of immunity, if any, to be afforded to the person whilst that person is in the requesting State, and any expenses or allowances payable to that person.

(4) The Central Authority, if satisfied that appropriate arrangements for the person's safety are made by the requesting State, invite the person to give or provide evidence or assistance in the requesting State.

(5) The Central Authority must promptly communicate in writing to the requesting State the person's response to the request, and if the person consents, the Central Authority must take any necessary steps to facilitate the person's attendance in the requesting State.

**Attendance of persons in Gibraltar.**

23.(1) The Central Authority may send a request to the requested State for the attendance of a person, subject to that person's consent, in Gibraltar-

- (a) to assist in a criminal investigation;
- (b) to appear in criminal proceedings in Gibraltar, unless that person is the person charged.

(2) The Central Authority in its request must include information on the extent of the immunity, if any, to be afforded to the person whilst the person is in Gibraltar, and any expenses or allowances payable to that person.

(3) The Central Authority may agree that the person make their appearance in Gibraltar conditional on a prior assurance being given by the Central Authority that the person will not be prosecuted, detained or subjected to any other restriction of their personal liberty in Gibraltar in respect of acts or convictions prior to their departure from the requested State.

(4) Subregulation (3) does not apply where the person having had a period of fifteen consecutive days from the date when their presence is no longer required by the Central Authority an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

(5) The Central Authority may ask the requested State to promptly communicate in writing the person's response to the request and, if the person consents, to confirm any steps necessary to facilitate that person's attendance in Gibraltar.

**Transfer of person in custody to give evidence or assist in Gibraltar.**

24.(1) Where-

- (a) there is a criminal investigation or criminal proceeding in Gibraltar which requires the presence of a person held in custody in the requested State to be temporarily transferred to Gibraltar for the purpose of assisting here with that criminal investigation or criminal proceeding; and
- (b) the person is not the person being investigated or charged,

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

- (2) This regulation applies to a person who is detained in custody in a requested State-
  - (a) by virtue of a sentence or order of a court exercising jurisdiction in that requested State; or
  - (b) in consequence of having been transferred there, or responsibility for that person's detention having been transferred to the requested State from Gibraltar, or any other state.
- (3) An order may be made by the court in respect of a person in custody under subregulation (1) only if –
  - (a) the requirements in subregulation (4) are agreed to by the Central Authority and requested State; and
  - (b) it appears to the court that it is necessary and proportionate for the person to be present in Gibraltar to assist for the purposes of a criminal investigation or criminal proceeding in Gibraltar.
- (4) The requirements are that-
  - (a) the period of detention the person undergoes in Gibraltar must be deducted from the period of custody in the requested 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 subregulation (1); and
  - (d) there are no other overriding grounds for not transferring the person to Gibraltar.
- (5) The written statement consenting to be transferred for the purpose mentioned in subregulation (1) cannot be withdrawn once a court grants an order under subregulation (3).
- (6) An order under this regulation authorises-
  - (a) the bringing of the person to Gibraltar;



- (b) the taking of that person to, and that person's detention in custody at, any place or places specified in the order; and
- (c) the return of the person to the requested State.

(7) The person must remain in the custody of the Central Authority until the requested State applies for their release.

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

(9) Where a person has been transferred under this regulation to Gibraltar, that person must not be prosecuted, detained or subjected to any other restriction of personal liberty in Gibraltar in respect of acts or convictions before their departure from Gibraltar.

(10) Subregulation (9) does not apply where the person having had for a period of fifteen consecutive days from the date when that person's presence is no longer required in Gibraltar, an opportunity of leaving, has nonetheless remained in Gibraltar, or having left it, has returned.

(11) A person is not subject to the Immigration, Asylum and Refugee Act in respect of that person's entry into Gibraltar in accordance with an order under this regulation, 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 that person is unlawfully present in Gibraltar; and
- (b) the provisions of Part VII of that Act shall have effect.

## **PART 8 OTHER FORMS OF ASSISTANCE**

### **Exchange of criminal convictions- outgoing request.**

25.(1) The Central Authority may send a request to the competent authority for information of any criminal convictions held in a requested State, for the purposes of-

- (a) criminal proceedings;
- (b) a criminal investigation.

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(2) If any personal data is received from the competent authority in response to the request referred to in subregulation (1), the use and storage of the data must comply with the requirements referred to in Part 4 of these Regulations.

#### **Exchange of criminal convictions- incoming request.**

26.(1) When the Central Authority receives a request from a competent authority for information of any criminal convictions held in Gibraltar, for the purposes of-

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

the Central Authority must transmit the request to the Commissioner of Police.

(2) The Commissioner of Police may execute a request from a competent authority providing the information if satisfied that the use and storage of the data complies with the requirements referred to in Part 4 of these Regulations.

(3) For the purposes of regulation 25 and this regulation, “criminal conviction” means-

- (a) any final decision of a criminal court against a natural person in respect of an offence, to the extent these decisions are entered in the criminal record of the convicting requesting State; and
- (b) in the case of Gibraltar means a conviction which is entered in the conviction register and includes a spent conviction within the meaning of the Criminal Procedure and Evidence Act 2011, if it is entered in the conviction register.

#### **Publicly accessible information.**

27.(1) A competent authority may send a request to the Central Authority for provision of any information from public records to which the public, or any section of the public has access, as of right or by virtue of an express permission, by payment or otherwise.

(2) The Central Authority may provide original copies, or where appropriate, certified copies of the information referred to in subregulation (1) to the competent authority in the requesting State upon request.

(3) The Central Authority may send a request to a competent authority for provision of the same information as set out in subregulation (1) and may request original copies of this information, or where appropriate, certified copies of the information.

**Circumstances in which assets may be shared.**

28.(1) The authority in Gibraltar that is responsible for-

- (a) receiving and dealing with incoming requests concerning asset-sharing of assets, that are confiscated following the cooperation of the requesting State and requested State;
- (b) preparing and sending outgoing requests concerning asset-sharing of assets that are confiscated following the cooperation of the requesting State and requested State,

is the Central Authority.

(2) Where the Central Authority receives a request for asset-sharing from the requesting State, it must consider the request with reference to any applicable procedures, guides or protocols followed by the Central Authority, and which have been approved by the Central Authority.

(3) The Central Authority may prepare and send an outgoing request for asset-sharing to a requested State in accordance with the applicable procedures, guides or protocols referred to in subregulation (2).

(4) A request made under this regulation must include details of-

- (a) the case to which the request relates;
- (b) the assets to which the request relates;
- (c) the authority or authorities involved;
- (d) the extent and circumstances of the cooperation between the requesting State and the requested State.

(5) On receipt of a request from a requesting State, the Central Authority must consider whether to share assets, and inform the requesting State of the outcome of the consideration of the request.

**Spontaneous information.**

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29.(1) The Commissioner of Police, or any designated person or persons, may disclose to a competent authority, any information which may arise in relation to an offence and which may-

- (a) assist the authorities in the Kingdom of Morocco in respect of any criminal investigation or criminal proceeding; or
- (b) lead to a request under the Convention by a competent authority.

(2) The Commissioner of Police, or any designated person or persons, may receive from a competent authority, any information which may arise in relation to an offence and which may-

- (a) assist in respect of any criminal investigation or criminal proceeding in Gibraltar; or
- (b) lead to a request under the Convention from Gibraltar.

(3) For the purposes of subregulations (1) and (2), the Central Authority may designate, by Notice in the Gazette, any other person or persons who may exchange or receive information under subregulations (1) or (2).

(4) The Commissioner of Police or the designated person or persons may not disclose any information under this regulation, until the competent authority, which is to receive that information, agrees to comply with any restrictions and conditions on the use of that information as are imposed by the Commissioner of Police, or designated person or persons.

(5) Where the Commissioner of Police or designated person or persons are the recipients of information provided by a competent authority, they shall not be bound by any restrictions and conditions on the use of that information as is imposed by that competent authority, unless the Commissioner of Police or designated person or persons receive prior notice of the information to be provided and agree to those restrictions and conditions.

#### **Costs.**

30.(1) The ordinary costs and expenses of executing a request in Gibraltar under these Regulations, unless otherwise agreed with a competent authority, are to be borne by the Government of Gibraltar, except for the following which are to be paid solely by the requesting State-

- (a) fees and reasonable expenses of experts;

- (b) costs under regulation 19;
  - (c) costs under regulation 20(8);
  - (d) the allowances and expenses incurred under regulation 22(3);
  - (e) the costs of establishing and operating video conferencing, and the interpretation and transcription of the video conferencing proceedings;
  - (f) the costs of transferring persons under regulation 23(2); and
  - (g) any other costs and expenses as are agreed.
- (2) If costs and expenses of an extraordinary nature are or will be required to fulfil a request, the Central Authority must consult the other contracting State to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs must be borne.

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**SCHEDULE**

**PROCEEDINGS OF A NOMINATED COURT UNDER REGULATION 17**

**EVIDENCE GIVEN BY VIDEOCONFERENCE OR OTHER AUDIOVISUAL TRANSMISSION**

**Securing attendance of witness.**

1. The nominated court has the same powers for securing the attendance of a witness to give evidence through videoconference or other audiovisual transmission as it has for the purposes of other proceedings before that court.

**Privilege of witness.**

2.(1) The witness cannot be compelled to give any evidence which that person cannot be compelled to give in criminal proceedings before the nominated court.

(2) The witness cannot be compelled to give any evidence if in doing so would be prejudicial to the security of Gibraltar.

(3) A certificate signed by or on behalf of the Governor to the effect that it would be prejudicial for that witness to give evidence is conclusive evidence of that fact.

(4) A person cannot be compelled to give any evidence in their capacity as an officer or servant of the Crown.

(5) Subparagraphs (2) and (4) are without prejudice to the generality of subparagraph (1).

**Record of hearing.**

3. Rules of court under the Act must make provision-

- (a) for the drawing up of a record of the hearing;
- (b) for sending the record to the competent authority.