

Subsidiary Legislation made under ss. 184(1)-(2), 184ZA(2), and 184A.

**Proceeds of Crime Act 2015 (External Requests and Orders under the Strasbourg Convention or Warsaw Convention) Order 2024**

**LN.2024/157**

*Commencement*

**8.8.2024**

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*In the exercise of powers conferred on it by sections 184(1) and (2), 184ZA(2), and 184A of the Proceeds of Crime Act 2015, and all other enabling powers, and for the purposes of implementing, in part, into the Laws of Gibraltar, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime signed in Strasbourg on the 8<sup>th</sup> November 1990 and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism signed on the 16<sup>th</sup> May 2005 in Warsaw, the Government has made this Order-*

**PART 1  
PRELIMINARY**

**Title.**

1. This Order may be cited as the Proceeds of Crime Act 2015 (External Requests and Orders under the Strasbourg Convention or Warsaw Convention) Order 2024.

**Commencement.**

2. This Order shall come into operation on the day of publication.

**Interpretation.**

3.(1) In this Order-

“coercive measure” means where a request has been made under this Order and the Central Authority requires a warrant or order to provide the assistance sought;

“court” means the Supreme Court of Gibraltar;

“request” means request for assistance under the Warsaw Convention or Strasbourg Convention as provided in Parts 1 to 3 of the Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019 and under this Order;

“offence” means a criminal offence which-

- (a) falls within the scope of the Strasbourg Convention or Warsaw Convention as applied to Gibraltar and the other state; and
- (b) in relation to a request for a coercive measure, is provided for under the laws of the requesting State and requested State;

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“Strasbourg Convention” means the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime signed in Strasbourg on the 8th November 1990;

“Warsaw Convention” means the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism signed on the 16<sup>th</sup> May 2005 in Warsaw;

“Strasbourg state” means a state or territory which has ratified or obtained extension of the Strasbourg Convention, and in the case of Gibraltar, it includes where Gibraltar has extension, or it is expected that extension will be obtained;

“Warsaw state” means a state or territory which has ratified or obtained extension of the Warsaw Convention, and in the case of Gibraltar, it includes where Gibraltar has extension, or it is expected that extension will be obtained.

(2) For the purposes of this Order, the definitions in the Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019 apply.

**Scope of this Order.**

4. This Order applies to-

- (a) external orders and external requests from a Strasbourg state or a Warsaw state, where a request is received by the Central Authority from either of these states; and
- (b) where applicable, orders and requests from Gibraltar where an order or a request is sent by the Central Authority to a Strasbourg state or a Warsaw state.

**Application of Parts 1 to 3 of the Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019.**

5.(1) A request from a Strasbourg state or a Warsaw state to the Central Authority must comply with-

- (a) the provisions of the Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019; and
- (b) the provisions of this Order.

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(2) A request sent from the Central Authority to a Strasbourg state or Warsaw state must comply with the provisions of Part 2 of this Order.

**PART 2  
REQUESTS AND ORDERS UNDER THE WARSAW CONVENTION AND  
STRASBOURG CONVENTION**

**Form of request.**

6.(1) A request under this Order must, save as otherwise provided in paragraph (2), be 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) In a case of urgency, a request may be made and transmitted in oral form, and if made orally, must be confirmed by a means that is capable of producing a written record within 48 hours from receipt of the oral request.

(3) The written records referred to in paragraphs (1) and (2) must be retained by the Central Authority.

**Content of request.**

7.(1) A request by a Strasbourg state or a Warsaw state must specify-

- (a) the authority making the request;
- (b) the authority carrying out the investigation or proceeding;
- (c) the object of and the reason for the request;
- (d) the relevant facts of the case;
- (e) the identity, date and place of birth, nationality and location of the person or the persons concerned, or seat in the case of a legal person or legal persons;
- (f) where the cooperation involves coercive action-
  - (i) the text of the statutory provisions, or where this is not possible, a statement of the relevant law applicable of the requesting State; and

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- (ii) confirmation that the measure or measures sought could be taken in the requesting State under its own domestic law;
  - (g) the property in relation to which the cooperation is sought, its location, its connection with the person or persons concerned, any connection with the offence, together with any information about other persons and their interests in the property;
  - (h) any particular procedure the requesting State wishes to be followed;
  - (i) a maximum amount for which recovery is sought in relation to the seizure of property, where there is a confiscation order for the payment of a sum of money;
  - (j) supporting documents of where third parties have had their opportunity to assert their rights in a requesting State;
  - (k) a certified true copy of a confiscation order made by a court in the requesting State, and a statement of the grounds on the basis of which a confiscation order has been made in the requesting State, if this is not contained in the order itself;
  - (l) a sworn declaration by the competent authority in the requesting State that the confiscation order is enforceable and is not subject to any form of appeal;
  - (m) the extent to which the enforcement of an order for confiscation is necessary.
- (2) All requests should be made in English or accompanied by a certified translation into English and any supporting documentation, if not in English, must be accompanied by a certified translation into English.
- (3) Save as otherwise provided in this Order, any request or document transmitted for the purposes of this Order does not require any form of legalisation.

**Transmission and urgent requests.**

- 8.(1) The Central Authority must communicate directly with the central authority of the requesting State for the purposes of a request under this Order.
- (2) In a case of urgency, requests and communications-

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- (a) may be sent by any authority recognised by the requesting State to an appropriate officer, and a copy of the request or communication must be provided by this authority to the Central Authority at the same time; or
- (b) may be sent through the International Criminal Police Organisation for forwarding to an appropriate officer.

**Spontaneous exchange.**

9.(1) The Central Authority may exchange information or evidence with any authority, recognised by the government of a Warsaw state or Strasbourg state concerned as the appropriate authority for receiving information or evidence, in connection with an offence where in the case of that Warsaw state or Strasbourg state, it may assist them in making a request under this Order.

(2) The Central Authority may receive from any authority recognised by the government of a Warsaw state or Strasbourg state, any information or evidence in connection with an offence where it may assist the Central Authority or an authority in Gibraltar in making a request under this Order.

**Service of documents.**

10.(1) An authority in a Warsaw state or Strasbourg state outside Gibraltar may send a document to the Central Authority, together with-

- (a) the statement and advice referred to in paragraphs (3)(a) and (b); and
- (b) a request for the document to be served on a person in Gibraltar.

(2) The Central Authority may cause the document to be served by post or, if the request is for personal service, direct the Commissioner of Police to cause it to be personally served on the person to whom the document is addressed.

(3) The document must be accompanied by-

- (a) a statement explaining the effect of the document;
- (b) advice as to the legal remedies available with the document under the law of the state where it was issued or made.

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(4) A document may be made or issued by a court in Gibraltar for the purpose of an investigation or proceeding in Gibraltar, and the person to be served is outside Gibraltar in a Warsaw state or Strasbourg state.

(5) Where the document is to be served outside Gibraltar and the person at whose request it is issued or made believes that the person on whom it is to be served does not understand English, they must—

- (a) inform the court referred to in paragraph (4) of that fact; and
- (b) provide the court with a copy of the document, or of so much of it as is material, translated into an appropriate language.

(6) A document served outside Gibraltar must include the information referred to in paragraph (3).

(7) For the purposes of this Order, “document” means—

- (a) judicial orders and judgments;
- (b) judicial documents relating to the enforcement of any judicial order or judgment.

**Grounds of refusal.**

11.(1) If a request is received by the Central Authority from a Strasbourg state or a Warsaw state, the Central Authority or Attorney General may refuse to execute that request if—

- (a) the request is incompatible with Gibraltar law;
- (b) the request is likely to prejudice the sovereignty, security or other interests of Gibraltar;
- (c) the request is disproportionate in relation to the offence, or the sum involved in the request is minor;
- (d) in relation to a coercive measure, that measure would not be available under Gibraltar law in a domestic case;
- (e) the request proposes a measure that would not be permitted in the requesting State;

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- (f) the request would infringe the principle of ne bis in idem;
  - (g) the offence to which the request relates would not be an offence under the law of the requested State if committed within that State;
  - (h) the proceeding or the investigation in the requesting State is subject to a legal challenge in that State.
  - (i) the offence involved in the request is a political offence or fiscal offence;
  - (j) confiscation is not provided for the type of offence to which the request relates, under the law of the requesting State;
  - (k) the assessment of the proceeds made by the requesting State would contravene the principles of domestic law of the requested State, because of the remote relationship between the offence and the proceeds;
  - (l) the assistance sought in the request involves coercive action, and the offence to which the request relates is not an offence under the law of Gibraltar, if committed within its jurisdiction.
- (2) If a request is received by the Central Authority from a Warsaw State alone which involves a political offence or fiscal offence, the Central Authority must not refuse to execute that request if it concerns an offence of terrorism or the financing of terrorism.
- (3) Where the Central Authority or Attorney General refuse the request, reasons must be provided to the requesting State.
- (4) Where dual criminality is required prior to any assistance being provided to a requesting State, this requirement is satisfied where the requesting State and Gibraltar both criminalise the conduct underlying the offence, which is the subject of the request.

**Postponement.**

12.(1) The Central Authority or Attorney General may postpone acting on a request where acting on it may interfere with an investigation or proceeding.

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

**Additional information.**

13.(1) If a request–

- (a) does not comply with this Order; or
- (b) the information provided by the requesting State is not sufficient to enable the Central Authority or Attorney General to consider or deal with a request,

the Central Authority may proceed to take any measures it can to grant the request, but may–

- (i) request that the requesting State amends the request or provides additional information; and
- (ii) set a time limit for the receipt of an amended request or additional information.

(2) The Central Authority may be asked by the requested State to amend a request for assistance or provide additional information within the time-period stipulated by that requested State.

(3) Requests in draft form–

- (a) may be sent to the Central Authority by the requesting State in order to determine the sufficiency of information in the request;
- (b) may be sent by the Central Authority to the requested State for the same purpose as set out in subparagraph (a).

**Confidentiality.**

14.(1) Except to the extent necessary to execute a 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) The Central Authority may make any reasonable procedural arrangements and impose any reasonable safeguards regarding any request as it considers appropriate to maintain the confidentiality of that request.

(3) The Central Authority may ask the requested State to make any reasonable procedural arrangements and impose any reasonable safeguards regarding any request received from

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Gibraltar, as it considers appropriate, to maintain the confidentiality of that request in relation to the exchange of spontaneous information under Article 9.

(4) Where in relation to a request, it is not possible for the requested State to comply with the requirement of confidentiality under this Article-

- (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 the request.

**Limitation on use.**

15.(1) Any evidence or information obtained from the Central Authority or the Attorney General by a Warsaw state or Strasbourg state arising from a request under this Order may not, without the prior consent of the Central Authority or the Attorney General, be used or disclosed for any other purpose other than that specified in the request.

(2) When the evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it must be returned to the Central Authority or Attorney General, unless they indicate that its return is not necessary.

(3) Where the requesting State intends to use evidence or information referred to in paragraph (1) for a different purpose to that stated in the request, a formal request for the Central Authority's or Attorney General for prior consent must be made in writing with the following information-

- (a) the reference number for the request;
- (b) details of the evidence to be used or shared;
- (c) the manner in which the evidence will be used or shared;
- (d) the relevance and need for the evidence to be shared or used.

(4) Where the Central Authority or Attorney General gives their consent to a request under paragraph (3), it may impose any terms and conditions as it deems appropriate for its use or disclosure.

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(5) Notwithstanding the provisions in this Article, the Central Authority or Attorney General may execute a request from a Warsaw state on the condition that the information or evidence must not be used without its consent for any other purpose.

**Continuing the measures.**

16.(1) This Article applies where-

- (a) property has been seized under this Order; or
- (b) a restraint order, property freezing order, or interim receiving order applies to that property.

(2) If a requesting State has information or evidence to suggest that the conditions for the seizure of property referred to in paragraph (1) is no longer met, the requesting State must provide this information or evidence to the Central Authority or Attorney General.

(3) Where the requesting State has the information or evidence referred to in paragraph (2) or otherwise, and the Central Authority or Attorney General provide this information or evidence to the court, the court must give the requesting State the opportunity of presenting reasons in support of keeping any order made by it in place.

**Multiple requests.**

17.(1) The Central Authority may receive and deal with more than one request in relation to the same property.

(2) The Central Authority must consult the requesting State or states where it receives more than one request in relation to the same property.

**Confiscation in more states.**

18. Where the Central Authority obtains a confiscation order, and, on the basis of this order, makes requests for confiscation of property in more than one requested State, it must inform all the persons that may be affected by an enforcement of the confiscation order about the requests.

**Progress of requests.**

19.(1) The Central Authority or Attorney General must inform the requested State of-

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- (a) the action taken on a request;
- (b) the outcome of a request;
- (c) a decision to refuse, postpone or impose conditions in relation to a request; or
- (d) any circumstances which make the taking of any step or action in the execution of a request impossible, or likely to be significantly delayed; or
- (e) any provisions in law which would lead to a lifting or setting aside of any orders made by the court.

(2) The requesting State must inform the Central Authority or Attorney General of any fact that would render any order made by the court wholly or partially unenforceable or impossible, or where any action is no longer justified.

**Rights of persons affected.**

20.(1) Where-

- (a) the Central Authority or any other person makes an application to the court for a restraint order, confiscation order, property freezing order, interim receiving order, or recovery order under the Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019;
- (b) the basis of the application referred to in subparagraph (a) is a request from a Warsaw state or Strasbourg state; and
- (c) that request contains a judicial order or judgment from the requesting State concerning rights claimed in property by third parties,

that judicial order or judgment must be recognised by the court unless one of the grounds of refusal in paragraph (2) applies.

(2) Recognition by the court of a judicial decision referred to in paragraph (1) may be refused if-

- (a) the third parties have not had an adequate opportunity to assert their rights in the requesting State;

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- (b) the judicial order or judgment is incompatible with an order or judgment by the court in relation to the same property;
- (c) it is incompatible with the ordre public of Gibraltar; or
- (d) the judicial order or judgment in the requesting State is contrary to the provisions on exclusive jurisdiction under Gibraltar law.

**Requests against body corporates and deceased persons.**

21.(1) Assistance under this Order must not be refused on any of the following grounds-

- (a) a body corporate is the subject of an investigation or proceeding;
- (b) where a liquidator or administrator has been appointed under the Insolvency Act 2011 or a voluntary liquidator has been appointed under the Companies Act 2014 after a request under this Order has been granted;
- (c) a person dies following the acceptance of a request under this Part,

unless any action sought in the request is deemed to be contrary to the fundamental principles of Gibraltar law.

- (2) The term “body corporate” includes a limited liability partnership.

**Costs.**

22.(1) Subject to paragraph (2), the costs of executing a request received from a requesting State must be borne by the Central Authority unless otherwise agreed.

(2) Where expenses of a substantial or extraordinary nature are or will be required to execute the request, the parties must consult each other in advance-

- (a) to agree the conditions on which the request is to be executed; and
- (b) the manner in which the costs must be borne.