

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,738 of 8th October, 2009

B. 36/09

BILL

FOR

AN ACT to amend the European Arrest Warrant Act 2004.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the European Arrest Warrant (Amendment) Act 2009 and comes into operation on the day of publication.

Amendment of the European Arrest Warrant Act 2004.

2.(1) The European Arrest Warrant Act 2004 is amended as follows.

(2) In section 7 for subsection (3) substitute—

“(3) Where a European arrest warrant is issued in the issuing state in respect of a person who has not been convicted of the offence specified therein, the European arrest warrant shall include or be accompanied by a statement in writing, from the judicial authority or any authority competent to issue such a statement in the issuing State, that the arrest and surrender of the person concerned is sought only for the purpose of conducting a criminal prosecution against him in respect of the offence specified therein or an offence disclosed by the same facts as the offence specified therein.”.

(3) In section 8(11) for “7(3)(b)” substitute “7(3)”.

(4) After section 9 insert—

“Provisional arrest.

9A.(1) A police officer may arrest a person without a warrant if he has reasonable grounds for believing that a European arrest warrant has been or will be issued in respect of that person.

(2) Where a person is arrested under this section—

- (a) a European arrest warrant in compliance with section 7 and Schedule 1 to this Act must be transmitted to the Central Authority by the issuing state within 48 hours of the arrest; and
- (b) such person shall, together with a copy of the warrant, a facsimile copy of the warrant or a true copy of the warrant, as soon as may be practicable after transmission of the European arrest warrant, be brought before the magistrates’ court, which shall, if satisfied that that person is the person in respect of whom the European arrest warrant was issued, proceed as if the person were brought before the court under section 10.

(3) If subsection (2) is not complied with and the person applies to the magistrates’ court to be discharged, the court must order his discharge.

(4) Subsection (5) applies if—

- (a) a person is arrested under this section on the basis of a belief that a European arrest warrant has been or will be issued in respect of him; and
- (b) the person is discharged under subsection (3).

(5) The person must not be arrested again under this section on the basis of a belief relating to the same warrant.”.

(5) In section 10—

- (a) after “A person arrested under a European arrest warrant shall” insert “, subject to section 9A(2), together with a copy of the warrant, a facsimile copy of the warrant or a true copy of the warrant”;
 - (b) in paragraph (b) delete “(being a date that falls not later than 21 days after the date of the person’s arrest)”.
- (6) In section 11–
- (a) delete subsection (2);
 - (b) in subsection (4)(a) for “the expiration of the period specified in subsection (3)” substitute “the making of the order”.
- (7) In section 12–
- (a) for subsection (2)(a) substitute–

“the European arrest warrant, a facsimile copy of the warrant or a true copy of the warrant and, where appropriate, such undertakings or statements as are required under this Act, or facsimile copies or true copies thereof are provided to the court.”;
 - (b) for subsection (3)(a) substitute–

“that he will not, without his consent, be surrendered to the issuing State, before the expiration of the period of 7 days specified in section 38(4); and”.
- (8) In section 15–
- (a) in subsection (1)(a) after “the offence specified in the European arrest warrant” insert “or an offence disclosed by the same facts as the offence specified in that warrant”;
 - (b) in subsection (1)(b)–
 - (i) after “issuing judicial authority” insert “or any authority competent to issue such an undertaking in the issuing State”;

- (ii) after “the offence specified in the European arrest warrant concerned” insert “or an offence disclosed by the same facts as the offence specified in that warrant”;
- (c) after subsection (1) insert—
 - “(1A) It shall be presumed that the law of the issuing State is such as to allow the surrender of the person by virtue of subsection (1)(a) unless it is demonstrated otherwise on the balance of probabilities.”;
- (d) in subsection (4)(c) after “the offence specified in the European arrest warrant concerned” insert “or an offence disclosed by the same facts as the offence specified in that warrant”;
- (e) in subsection (5)—
 - (i) in paragraph (a) after “issuing judicial authority” insert “, or any authority competent to make such a request in the issuing State,”;
 - (ii) in paragraph (b)(i)(a) after “the offence specified in the European arrest warrant concerned” insert “or an offence disclosed by the same facts as the offence specified in that warrant”;
- (f) in subsection (6)—
 - (i) in the text following paragraph (c) after “the offence specified in the European arrest warrant” insert “or an offence disclosed by the same facts as the offence specified in that warrant”;
 - (ii) in sub-paragraph (i) after “issuing judicial authority” insert “or any authority competent to issue such an undertaking in the issuing State”;

- (iii) in sub-paragraph (iii) after “issuing judicial authority” insert “or any authority competent to issue such an undertaking in the issuing State”;

(9) In section 16–

- (a) in subsection (1)(b) for “the magistrates’ court by the issuing judicial authority” substitute “the Central Authority by the issuing judicial authority or any authority competent to issue such an undertaking in the issuing State”;

- (b) after subsection (1) insert–

“(1A) It shall be presumed that the law of the issuing State is such as to allow the surrender of the person by virtue of subsection (1)(a) unless it is demonstrated otherwise on the balance of probabilities.”;

- (c) in subsection (2)(b) for “the magistrates’ court by or on behalf of the issuing judicial authority” substitute “the Central Authority by the issuing judicial authority or any authority competent to issue such an undertaking in the issuing State”;

- (d) after subsection (2) insert–

“(2A) It shall be presumed that the law of the issuing State is such as to allow the surrender of the person by virtue of subsection (2)(a) unless it is demonstrated otherwise on the balance of probabilities.”.

(10) In section 17–

- (a) for subsection (1) substitute–

“(1) A person shall not be surrendered under this Act unless–

- (a) under the law of the issuing State the person cannot be subsequently extradited to a third country, in respect of an offence committed or alleged to have been committed in that third

country, without the consent of the magistrates' court; or

- (b) the issuing judicial authority or any authority competent to issue such an undertaking in the issuing State gives an undertaking in writing that the person will not be extradited to a third country, in respect of an offence committed or alleged to have been committed in that third country, without the consent of the magistrates' court.

(1A) It shall be presumed that the law of the issuing State is such as to allow the surrender of the person by virtue of subsection (1)(a) unless it is demonstrated otherwise on the balance of probabilities.”;

- (b) in subsection (2) after “the issuing judicial authority” insert “or any authority competent to make such a request in the issuing State”;
- (c) in subsection (2) for “third State” substitute “third country”;
- (d) in subsection (3) for “third State” (on both occasion it appears) substitute “third country”.

(11) After section 25 insert—

“Effects of the surrender (specialty).

25A.(1) Subject to subsections (2) and (3), where a person is surrendered to the Gibraltar authorities pursuant to a European arrest warrant, he shall not be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his personal freedom, for an offence committed before his surrender other than the offence specified in the European arrest warrant or an offence disclosed by the same facts as the offence specified in that warrant.

- (2) Subsection (1) does not apply in the following cases—

- (a) when the person having had the opportunity to leave Gibraltar has not done so within 45 days of his or her final discharge, or has returned to Gibraltar after leaving it;
- (b) where the offence is not punishable on conviction by a term of imprisonment or detention;
- (c) in circumstances where upon conviction he is liable to a term of imprisonment or detention and such other penalty as does not involve a restriction of his personal liberty, and the magistrates' court is satisfied that the said other penalty only will be imposed should he be convicted of the offence concerned;
- (d) where the person consented to be surrendered and that person, where appropriate and at the appropriate time, renounced the specialty rule in accordance with the Framework decision;
- (e) where, after the surrender, the person expressly and voluntarily renounces entitlement to the specialty rule with regard to specific offences committed or alleged to have been committed by him before his surrender. Such renunciation may only be made before a court and shall be in a form that ensures that the person is aware of his right to professional legal advice and has had the opportunity to exercise such right;
- (f) where, the executing judicial authority which surrendered the person has consented to the proceedings, sentencing, detention or other restriction following a request to it by the magistrates' court, upon an application made by or on behalf of the Attorney General, which includes the information required under section 24(2) and which relates to an offence, other than one specified in the European arrest warrant or an offence disclosed by the same facts as the offence specified in that warrant, which falls within the scope of this Act.

(3) Subsection (1) does not apply if the person surrendered could be liable to a penalty (other than a penalty consisting of the restriction of the person's liberty) including a financial penalty in respect of such offence notwithstanding that where such person fails or refuses to pay the penalty concerned (or, in the case of a penalty that is not a financial penalty, fails or refuses to submit to any measure or comply with any requirements of which the penalty consists) he may, under the laws of Gibraltar be detained or otherwise deprived of his personal liberty.

Effects of the surrender (subsequent surrender or extradition).

25B(1). Subject to subsection (2), where a person is surrendered to the Gibraltar authorities pursuant to a European arrest warrant, that person shall not be—

- (a) surrendered to another State pursuant to a European arrest warrant issued by a judicial authority in that other State in respect of an offence committed or alleged to have been committed before his surrender to the Gibraltar authorities; or
- (b) extradited to a third country in respect of an offence committed or alleged to have been committed before his surrender to the Gibraltar authorities without the consent of the executing judicial authority which surrendered the person.

(2) Subsection (1) does not apply in any of the following cases—

- (a) when the person having had the opportunity to leave Gibraltar has not done so within 45 days of his final discharge, or has returned to Gibraltar after leaving it;
- (b) where, after the surrender to the Gibraltar authorities, the person expressly and voluntarily renounces entitlement to the specialty rule with regard to specific offences committed or alleged to have been committed by him before his surrender. Such renunciation may only be made before a court and shall be in a form that ensures that the person is

aware of his right to professional legal advice and has had the opportunity to exercise such right;

- (c) where the person is not subject to the specialty rule in accordance with section 25A(2)(d), (e) or (f).”.

(12) In section 43 subsections (6) and (7) are deleted.

(13) In section 44—

- (a) in subsection (7) for “the appeal must be bought” substitute “the notice of appeal must be filed”;
- (b) in subsection (8)(a) for “the appeal must be taken to have been bought;” substitute “the notice of appeal must be taken to have been filed; and”.

EXPLANATORY MEMORANDUM

This Bill amends the European Arrest Warrant Act 2004 in order to take account of recent judicial rulings, allow for provisional arrests and to bring the legislation closer to the relevant Framework Decision.

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