

Transnational Organised Crime Act 2006

Principal Act

Act. No. 2006-04	<i>Commencement</i>	20.4.2006
	<i>Assent</i>	20.4.2006

Amending enactments	Relevant current provisions	Commencement date
LN.2020/521 s. 7(b)		1.1.2021
Act.2023-31 s. 5, 8, 8A, 9(1)(a)-(b), 10, 16A		27.7.2023

EU legislation/International agreements involved:

United Nations Convention Against Transnational Organised Crime

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AN ACT TO MAKE PROVISION FOR THE IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME.

**Part I
Preliminary**

Title.

1. This Act may be cited as the Transnational Organised Crime Act 2006.

Interpretation.

2. In this Act—

“Convention” means the United Nations Convention against Transnational Organised Crime;

“relevant offence” means an offence that is punishable in Gibraltar by imprisonment for a term of four years or more;

“State” means Gibraltar, or a State that has ratified the Convention or a Territory covered by such a ratification.

Requests for assistance: procedure.

3.(1) Where a State makes a request for assistance under the provisions of this Act the Chief Secretary must—

- (a) be satisfied that the State making the request (“the requesting State”) has ratified the Convention; and
- (b) be satisfied that the requesting State would reciprocate in respect of a request issued from Gibraltar.

(2) Where the Chief Secretary certifies that the provisions of subsection (1)(a) and (b) are satisfied he shall direct that the request be proceeded with.

Application: relevant offences.

4.(1) This Act applies where a relevant offence is committed that is transnational in nature.

(2) An offence is transnational in nature when either—

- (a) it is committed in more than one State;

- (b) it is committed in one State but a substantial part of the preparation, planning, direction or control occurs in another State;
- (c) it is committed in one State but has substantial effects in another State.

Jurisdiction.

5. A court in Gibraltar shall have jurisdiction to hear any matter to which section 4 applies -
- (a) where the offence was committed in Gibraltar;
 - (b) where the offence was committed outside Gibraltar, and it has an effect in Gibraltar;
 - (c) where the offence was committed wholly or partly on board a vessel that is registered under the laws of Gibraltar at the time the offence was committed.

PART II
Extradition

Application of Fugitive Offenders Act 2002.

6.(1) Subject to the subsection (2), the Fugitive Offenders Act 2002 shall apply subject to the following—

- (a) a reference to a relevant offence in the Fugitive Offenders Act 2002 means a relevant offence under this Act; and
- (b) a reference in the Fugitive Offenders Act 2002 to the United Kingdom, the Republic of Ireland, Commonwealth Countries, or United Kingdom Dependencies shall be taken to be a reference to a State, as defined in this Act.

(2) Where any inconsistency arises the court shall interpret the Fugitive Offenders Act 2002 with such modifications as are necessary to give effect to the Convention.

(3) Sections 2 and 4 of and the Schedule to the Fugitive Offenders Act 2002 shall not apply to offences under this Act.

Extradition under other enactments.

7. The provisions of this Part are not to be construed as imposing a limitation on any proceedings instituted under—

- (a) the Fugitive Offenders Act 2002;

- (b) the Extradition Arrest Warrant Act 2004;
- (c) any other enactment,

and which are not originated under this Act.

PART III
Mutual Legal Assistance

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

8. Subject to section 8A, where in relation to a relevant offence a request for assistance is received or is to be made by a State under this Act, the provisions of the Mutual Legal Assistance (International) Act 2005 shall apply as if that State were listed in Schedule 2 of that Act.

Refusal and postponement of assistance.

8A.(1) In addition to refusal under section 3(2)(b) of the Mutual Legal Assistance (International) Act 2005, a request for assistance falling under section 8 may be refused-

- (a) where the authorities in Gibraltar would be prohibited from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceeding in Gibraltar;
- (b) if the grant of the request would be contrary to any provision of Gibraltar law; or
- (c) the request does not fall within Article 18 of the Convention.

(2) The provision of assistance under section 8 may be postponed if it might interfere with an ongoing investigation, prosecution or judicial proceeding.

External confiscation orders.

9.(1) Where a court in a State has made a confiscation order in respect of a relevant offence-

- (a) the court must proceed as if the confiscation order made by that State is an external order to which Chapter 2 of the Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019 applies; or
- (b) as if that State were a designated State under paragraph 3(1) of the Drug Trafficking Offences Act 1995 (Designated Countries and Territories) Order 1999.

(2) Subsection (1) shall not apply if the court is satisfied that the confiscation order relates to an offence that is not covered by the Convention.

**PART IV
Miscellaneous**

Corruption.

10. *Deleted.*

Television link evidence.

11.(1) In proceedings instituted under this Act, a person other than the accused may give evidence through a live television link if-

- (a) that person is outside Gibraltar;
- (b) an application under subsection (2) for the issue of a letter of request has been granted; and
- (c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that person.

(2) The prosecution or the defence in any proceedings referred to in subsection (1) may apply to a judge for the issue of a letter of request to-

- (a) a court or tribunal exercising jurisdiction in a country or territory outside Gibraltar where a prospective witness is ordinarily resident; or
- (b) any authority which the judge is satisfied is recognised by the government of that country or territory as the appropriate authority for receiving requests for assistance in facilitating the giving of evidence through a live television link,

requesting assistance in facilitating the giving of evidence by that prospective witness through a live television link.

(3) An application under subsection (2) shall be granted only if the judge is satisfied that-

- (a) the evidence which it is averred the prospective witness is able to give is necessary for the proper adjudication of the trial;
- (b) the prospective witness has been intimidated or fears intimidation if he travels to Gibraltar for the purpose of giving evidence; and
- (c) the grant of the application-
 - (i) is in the interests of justice; and

- (ii) in the case of an application by the prosecution, is not unfair to the accused.

Protection of Witnesses.

12. In any proceedings instituted in Gibraltar under this Act the Commissioner of Police may take such steps as he deems necessary for the protection of a witness in those proceedings.

Controlled delivery.

13.(1) In any investigation in relation to a relevant offence, the Commissioner of Police or the Collector of Customs may by written authority instruct their officers to allow the passage of a consignment that is or is reasonably believed to contain illegal contents where—

- (a) to do so will assist the identification of persons involved in the commission of a relevant offence whether in Gibraltar or elsewhere; and
- (b) the competent authority of the next State of transit has been notified and accepts responsibility for the monitoring of the consignment, or if it is the State of destination of the consignment, will undertake the necessary surveillance up to and including the delivery of the consignment.

(2) In any investigation in relation to a relevant offence where Gibraltar is the destination of a consignment that is or is reasonably believed to contain illegal contents, the Commissioner of Police or the Collector of Customs may by written authority instruct their officers to allow the delivery of the consignment when to do so will assist the identification of persons involved in the commission of a relevant offence whether in Gibraltar or elsewhere.

Liability of corporate bodies.

14.(1) Subsection (2) applies to proceedings in relation to a relevant offence where the enactment under which proceedings are to be instituted makes no separate provision for the liability of the officers of the body corporate.

(2) Where a body corporate is guilty of a relevant offence and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Rules of Court.

15. The Chief Justice may by rules of court make provision for the practice and procedure to be followed in connection with proceedings under this Act.

Regulations.

16. The Government may make regulations in respect of any matter that arises from or is incidental to this Act or the implementation of the Convention or any other relevant international obligation

Power to amend the Act.

16A.(1) The Government may make regulations under this section to amend, add to or substitute any matter provided for in the Act for the purpose of implementing-

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

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

(3) Section 23(b) of the Interpretation and General Clauses Act shall not apply to any regulations made under this section.