

Export Control

THE CHEMICAL WEAPONS (SANCTIONS) ORDER 2019

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**Subsidiary
2019/001**

Subsidiary Legislation made under s.3, 4, 6, 7 and 9.

THE CHEMICAL WEAPONS (SANCTIONS) ORDER 2019**(LN. 2019/001)***Commencement* **9.1.2019****Implementing:**

Council Regulation (EU) No 2018/1542

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In exercise of the powers conferred upon him by sections 3, 4, 6, 7 and 9 of the Export Control Act 2005, section 23(g) (i) of the Interpretation and General Clauses Act and all other enabling powers, for the purpose of implementing Council Regulation (EU) No 2018/1542 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons, the Minister has made the following Order-

Part 1
Preliminary

Title.

1. This Order may be cited as the Chemical Weapons (Sanctions) Order 2019.

Commencement.

2. This Order shall come into operation on the 9th January 2019.

Interpretation.

- 3.(1) In this Order-

“aircraft” means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing airborne vehicle or helicopter;

“BGTW” means British Gibraltar Territorial Waters which is the area of sea, the sea bed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;

“the Council Regulation” means Council Regulation (EU) 2018/1542 of 15th October 2018 concerning restrictive measures against the proliferation and use of chemical weapons and a reference to Annex I to that Regulation is to be construed as a reference to that Annex as amended from time to time;

“designated person” means any person listed in Annex I to the Council Regulation which is reproduced in Schedule 2;

“document” includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but may be used to obtain funds, goods or services;

“frozen account” means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person;

funds” means financial assets and benefits of every kind, including-

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with relevant institutions or other entities, balances on accounts, debts and debt obligations;
- (c) publicly and privately traded securities and debt instruments, including stocks and shares certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- (d) interest, dividends or other income on or value accruing from or generated by assets;
- (e) credit, rights of set-off, guarantees, performance bonds or other financial commitments;
- (f) letters of credit, bills of lading and bills of sale;
- (g) documents showing evidence of an interest in funds or financial resources; and
- (h) any other instrument of export financing;

“goods” includes items, materials and equipment;

“insurance” means an undertaking or commitment where a person is obliged, in return for a payment, to provide another person, in the event of materialisation of a risk, with an indemnity or a benefit as determined by the undertaking or commitment;

“Minister” means the Minister with responsibility for finance;

“officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate or any person who has purported to act in any such capacity;

“relevant institution” means-

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- (a) a person licenced or authorised under the Financial Services (Investment and Fiduciary Services) Act or the Financial Services (Banking Act) to carry on regulated activity; or
- (b) an undertaking that by way of business-
 - (a) operates a currency exchange office;
 - (ii) transmits money (or any representation of monetary value) by any means; or
 - (iii) cashes cheques that are made payable to customers;

“ship” includes every description of vessel used in navigation;

“transfer”, in relation to funds, means-

- (a) any transaction carried out on behalf of a payer through a payment service provider by electronic means, with a view to making funds available to a payee at a payment service provider, regardless of whether the payer and the payee are the same person; or
- (b) any transaction by non-electronic means such as in cash, cheques or accountancy orders, with a view to making funds available to a payee regardless of whether the payer and payee are the same person; and

“vehicle” means land transport vehicle.

(2) Any expression used both in this Order and in the Council Regulation has the meaning that it bears in the Council Regulation.

Part 2 Freezing of funds etc.

Dealing with funds and economic resources.

4.(1) It is an offence for a person (“P”), including the designated person, to deal with funds or economic resources belonging to, or owned, held or controlled by, a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.

(2) In subparagraph (1), “deal with” means-

- (a) in relation to funds-
 - (i) use, alter, move, allow access to or transfer;
 - (ii) deal with the funds in any other way that would result in a change in volume, amount, location, ownership, possession, character or destination; or
 - (iii) make any other change that would enable use, including portfolio management; and
- (a) in relation to economic resources, use to obtain funds, goods or services in any way, including by selling, hiring or mortgaging the resources.

(3) It is an offence for a person (“P”) to make funds or economic resources available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that-

- (a) P is making the funds or economic resources so available; and
- (b) in the case of economic resources, the designated person would be likely to exchange them, or use them in exchange, for funds, goods or services.

(4) It is an offence for a person (“P”) to make funds or economic resources available (directly or indirectly) to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or economic resources so available.

(5) For the purposes of subparagraph (4)-

- (a) funds or economic resources are made available for the benefit of a designated person only if that person obtains, or is able to obtain, a significant financial benefit from the funds or economic resources; and
- (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(6) No liability arises for any person concerned in the freezing of funds or economic resources in accordance with this paragraph unless it is proved that the funds or economic resources were frozen or withheld as a result of negligence.

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(7) This paragraph is subject to paragraph 5, 7 and 8.

Credits to a frozen account.

5.(1) Nothing in paragraph 4 prevents a person from crediting a frozen account with-

- (a) interest or other earnings due on the account;
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account; or
- (c) payments due under judicial, administrative or arbitral decisions rendered in Gibraltar or enforceable in Gibraltar.

(2) Nothing in paragraph 4 prevents a relevant institution from crediting a frozen account where it receives funds transferred to the account.

Information relating to funds etc.

6.(1) The Minister must take such steps as he considers appropriate to cooperate with any international investigation relating to the funds, economic resources or financial transactions of-

- (a) a designated person;
- (b) a person owned or controlled by a designated person; or
- (c) a person acting on behalf of, or at the direction of, a designated person.

(2) A relevant institution or relevant business or profession must inform the Minister as soon as practicable if it knows or suspects that a customer-

- (a) is a designated person; or
- (b) has committed an offence under paragraph 4 or 7(10).

(3) When informing the Minister under subparagraph (2), the relevant institution or relevant business or profession must state-

- (a) the information or other matter on which the knowledge or suspicion is based;

- (b) any information it holds about the customer by which the customer can be identified; and
 - (c) if the customer is a designated person, the nature and amount or quantity of any funds or economic resources held by the relevant institution or relevant business or profession for the customer since the customer first became a designated person.
- (4) A relevant institution must inform the Minister as soon as practicable if it credits a frozen account in accordance with paragraph 5(1)(b) or (c) or 5(2).
- (5) It is an offence for a relevant institution or relevant business or profession to fail to comply with a requirement of subparagraph (2), (3) or (4).
- (6) Anything done by a relevant institution or relevant business or profession in accordance with this paragraph is not to be treated as a breach of any restriction imposed by statute or otherwise.
- (7) For the purposes of this paragraph, “customer”, in relation to a relevant institution or relevant business or profession, includes-
- (a) a person who is or has been a customer of the relevant institution or the relevant business or profession at any time since the coming into force of this Order; and
 - (b) a person with whom the relevant institution or the relevant business or profession has had dealings in the course of its business at any time since the coming into force of this Order.
- (8) In this paragraph, a “relevant business or profession” means any of the following operating in Gibraltar-
- (a) an auditor;
 - (b) a casino;
 - (c) a dealer in precious metals or stones;
 - (d) an external accountant;
 - (e) an independent legal professional;
 - (f) an estate agent;

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- (g) a tax adviser; and
- (h) a trust or company service provider.

(9) For the purpose of subparagraph (8)-

“auditor” means any firm or sole practitioner who is a statutory auditor within the meaning of the Financial Services (Auditors) Act 2009 and carries out statutory audit work within the meaning of that same Act;

“casino” means the holder of a casino operating licence granted under section 3(1) of the Gambling Act 2005;

“dealer in precious metals or stones” means a person engaged in the business of making, supplying, selling (including selling by auction) or exchanging-

- (a) articles made from gold, silver, platinum or palladium; or
- (b) precious stones or pearls;

“external accountant” means a firm or sole practitioner who by way of business provides accountancy services to other persons, when providing such services;

“independent legal professional” means a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when providing such services;

“estate agent” means a firm or sole practitioner, who by way of business provides real estate agency services to their client in relation to transactions concerning the buying or selling of real estate by their client, when the work is being carried out;

“tax adviser” means a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services;

“trust or company service provider” means a firm or sole practitioner who by way of business provides any of the following services to other persons, when that firm or practitioner is providing such services-

- (a) forming companies or other legal persons;

- (b) acting, or arranging for another person to act-
 - (i) as a director or secretary of a company;
 - (ii) as a partner of a partnership; or
 - (iii) in similar capacity in relation to other legal persons;
- (a) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
- (b) acting, or arranging for another person to act, as-
 - (i) a trustee of an express trust or a similar legal arrangement; or
 - (ii) a nominee shareholder for a person.

(10) In subparagraph (9), “firm” means any entity that, whether or not a legal person, is not an individual, and includes a body corporate and a partnership or other unincorporated association.

Part 3 General

Licences granted by the Minister.

7.(1) The Minister may, grant a licence authorising an activity that would otherwise be prohibited under paragraph 4.

(2) A person is not guilty of an offence under paragraph 4 in respect of anything done by the person under the authority of a licence granted by the Minister.

- (3) A licence may relate to-
- (a) payment of basic expenses of designated persons and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines, medical treatment, taxes, insurance premiums and public utility charges;
 - (b) payment of reasonable professional fees and expenses associated with the provision of legal services;

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- (c) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;
 - (d) payment of necessary extraordinary expenses;
 - (e) payments into or from an account of a diplomatic or consular mission or of an international organisation enjoying immunities in accordance with international law, intended to be used for official purposes of the diplomatic or consular mission or international organisation;
 - (f) satisfaction of an arbitral decision rendered before the date on which the designated person was so designated, or satisfaction of a judicial or administrative decision made at any time;
 - (g) payment due under a contract or agreement concluded by, or an obligation that arose before, the date on which the designated person was so designated provided that the payment is not for the benefit of a designated person.
- (4) A licence must specify the acts authorised by it and may be-
- (a) general or granted to a category of persons or to a particular person;
 - (b) subject to conditions; or
 - (c) of indefinite duration or subject to an expiry date.
- (5) The Minister may vary or revoke a licence at any time.
- (6) On the grant, variation or revocation of a licence, the Minister must-
- (a) in the case of a licence granted to a particular person, give written notice of the grant, variation or revocation to that person; and
 - (b) in the case of a general licence or a licence granted to a category of persons, take such steps as he considers appropriate to publicise the grant, variation or revocation of the licence.
- (7) Any notice to be given to a person by the Minister under subparagraph (6) may be given-
- (a) by posting it to the person's last known address; or

- (b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office in Gibraltar of the body or partnership.

(8) Where the Minister does not have an address in Gibraltar for the person, he must make arrangements for the notice to be given to the person at the first available opportunity.

(9) Failing to comply with any condition in the licence is acting in a way that is not authorised by the licence unless-

- (a) the licence was modified after the completion of the act authorised by the licence; and
- (b) the alleged failure to comply with a condition in the licence would not have been a failure if the licence had not been so modified.

(10) It is an offence for a person to knowingly or recklessly make any statement or give any document or information which is false in a material particular for the purpose of obtaining a licence.

(11) A licence granted in connection with the application for which the false statement was made or the false document or information given is void from the time it was granted.

Licences granted outside Gibraltar.

8. A person is does not commit an offence under paragraph 4 in respect of anything done by the person-

- (a) outside Gibraltar; and
- (b) under the authority of a licence granted in accordance with any provisions of the law in force in the place where it is done corresponding with the provisions of this Order.

Claims for indemnity or under contract.

9.(1) No claim in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by this Order shall be enforced if it is made by-

- (a) a designated person; or

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(b) a person acting through or on behalf of a designated person.

(2) Subparagraph (1) applies in particular to any claim for indemnity or any other claim of this type, such as a claim for compensation or a claim under guarantee (including a financial guarantee or indemnity).

(3) In any proceedings for the enforcement of such a claim, the burden of proof that the claim is not prohibited is on the person seeking to enforce that claim.

Evidence and Information.

10. Schedule 1 (evidence and information provisions) has effect.

Functions of the Minister.

11. The Minister may, to such extent and subject to such restrictions and conditions as he thinks proper, delegate or authorise the delegation of any of his functions under this Order to any person, or class or description of persons.

Circumvention and contravention of prohibitions.

12. It is an offence for a person to intentionally participate in an activity, knowing that the objector effect of the activity is (directly or indirectly)-

- (a) to circumvent any of the prohibitions in paragraph 4; or
- (b) to enable or facilitate the contravention of any such prohibition.

Penalties.

13.(1) A person guilty of an offence under paragraph 4 or 12 is liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or to both.

(2) A person guilty of an offence under paragraph 6(5) or 7(10) or paragraph 3(b), (c) or (d) of Schedule 1 is liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or to both.

(3) A person guilty of an offence under paragraph 3(a) or 5 of Schedule 1 is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or to both.

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(4) If an offence under this Order committed by a body corporate is shown-

- (a) to have been committed with the consent or connivance of an officer of the body corporate; or
- (b) to be attributable to any neglect on the part of an officer of the body corporate,

the officer as well as the body corporate are liable to be proceeded against and punished accordingly.

Extra-territorial application of offences.

14.(1) An offence under this Order may be committed by conduct wholly or partly outside Gibraltar by-

- (a) a British person;
- (b) a body incorporated or constituted under the laws of Gibraltar.

(2) In subparagraph (1) “British person” means-

- (a) a British citizen, a British Overseas Territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981 is a British subject; or
- (c) a British protected person within the meaning of that Act.

(3) An offence under this Order may also be committed by-

- (a) any person in Gibraltar;
- (b) any person on board a ship or aircraft that is registered in Gibraltar.

(4) In this paragraph “conduct” includes acts and omissions.

(5) Nothing in this paragraph affects any criminal liability arising otherwise than under this paragraph.

Proceedings.

15.(1) Proceedings against any person for an offence under this Order may be taken before the Supreme Court.

(2) Summary proceedings for an offence alleged to have been committed outside Gibraltar may be instituted within the period of 12 months beginning with the date on which the person charged first enters Gibraltar after committing the offence.

(3) Proceedings for an offence must not be instituted in Gibraltar except with the consent of the Attorney General.

(4) Nothing in paragraph (3) prevents-

- (a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of an offence; or
- (b) the remand in custody or on bail of any person charged with an offence.

(6) A reference in this paragraph to an offence is to an offence under this Order.

Crown application.

16.(1) This Order binds the Crown in the right of the Government of Gibraltar.

(2) No contravention by the Crown in right of the Government of Gibraltar of a provision of this Order makes the Crown criminally liable.

(3) Nothing in this paragraph affects Her Majesty in her private capacity

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Paragraph 10

Schedule 1
Evidence and Information**Power to require information, documents or goods.**

1.(1) An authorised officer may request a person in or resident in Gibraltar to provide any information or produce any document or goods in the person's possession or control which the officer may require for the purpose of-

- (a) securing compliance with, or detecting evasion of, this Order;
- (b) obtaining evidence of the commission of an offence under this Order;
- (c) establishing the nature and amount or quantity of any funds or economic resources owned, held or controlled by a designated person;
- (d) establishing the nature of any financial transactions entered into by a designated person; or
- (e) cooperating with any international investigation in accordance with paragraph 6(1).

(2) When exercising the power in subparagraph (1), an authorised officer may-

- (a) take copies of or extracts from any document so produced;
- (b) request a person producing a document to give an explanation of it; and
- (c) where that person is a body corporate, request a person who is a present or past officer or employee of the body corporate to give such an explanation.

(3) A person to whom a request is made must comply with it within such time and in such manner as may be specified in the request.

(4) Any power under this Schedule to require the provision of information, or production for inspection of a document or goods, includes a power to specify the form in which the information or document should be given, and the period within which the information, document or goods should be provided or produced for inspection.

(5) Nothing in this paragraph is to be taken to require a person who has acted as counsel or solicitor for a person to disclose any privileged information or document in the person's possession in that capacity.

Search warrants.

2.(1) A justice of the peace may grant a search warrant if satisfied by information on oath that-

- (a) there are reasonable grounds for suspecting that-
 - (i) an offence under this Order has been, is being, or is about to be committed; or
 - (ii) any information, document or goods requested by an authorised officer under paragraph 1 has or have not been provided or produced; and
- (b) evidence in relation to the offence, or the information, document or goods so requested, is or are to be found on a ship, aircraft, vehicle or premises specified in the information.

(2) A search warrant issued under this paragraph is a warrant empowering an authorised officer to enter and search the ship, aircraft, vehicle or premises specified in the information, at any time within one month from the date of the warrant.

(3) An authorised officer who enters and searches a ship, aircraft, vehicle or premises under a warrant issued under this paragraph may-

- (a) take such other persons and such equipment on to the ship, aircraft, vehicle or premises as appear to the officer to be necessary;
- (b) take such steps as appear to the officer to be necessary, including in particular any steps mentioned in subparagraph (4);
- (c) inspect and seize anything found in the course of a search if the officer reasonably suspects that-
 - (i) it is evidence in relation to an offence under this Order;
 - (ii) it is information, a document or goods requested (but not provided or produced) under paragraph 1; or

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- (iii) it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed;
 - (d) take copies of any document.
- (4) The steps mentioned in subparagraph (3)(b) include-
 - (a) entering any land;
 - (b) using reasonable force; and
 - (c) stopping a ship, aircraft or vehicle for the purposes of entering and searching it.
- (5) An authorised officer who enters a ship, aircraft, vehicle or premises under a warrant issued under this paragraph may-
 - (a) search any person found on the ship, aircraft, vehicle or premises whom the officer has reasonable cause to believe to be in possession of anything which may be required as evidence for the purposes of proceedings in respect of an offence under this Order; and
 - (b) seize anything found in such a search.
- (6) Anything seized under subparagraph (3)(c) or (5)(b) may be-
 - (a) retained for so long as is necessary in all the circumstances; and
 - (b) forfeited, disposed of or transferred as appropriate.
- (7) A search of a person under subparagraph (5) must be carried out by a person of the same sex.

Offences.

- 3. It is an offence for a person to-
 - (a) without reasonable excuse, refuse or fail within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule;

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- (b) knowingly or recklessly give any information, or produce any document, which is false in a material particular in response to such a request;
- (c) destroy, mutilate, deface, conceal or remove any document with intent to evade the provisions of this Schedule; or
- (d) otherwise intentionally obstruct a person in the exercise of that person's powers under this Schedule.

4. Where a person is convicted of an offence under paragraph 3(a), the court may make an order requiring the person, within such period as may be specified in the order, to give the requested information or produce the requested document.

5.(1) It is an offence for a person to disclose information or a document obtained in accordance with this Order (including a copy or extract made of such a document) except-

- (a) to a person who would have been authorised to request the information or document under this Order;
- (b) to a person holding or acting in any office under or in the service of the Government of Gibraltar;
- (c) for the purpose of giving assistance or cooperation, with the authority of the Minister to-
 - (i) any organ of the United Nations; or
 - (ii) any person in the service of the United Nations, the Council of the European Union, the European Commission or the government of any State or territory.
- (d) with a view to instituting, or otherwise for the purposes of, any proceedings in Gibraltar for an offence under this Order.
- (e) to the Gibraltar Financial Services Commission; or
- (f) to any third party, with the consent of a person who, in the person's own right, is entitled to the information or to possession of the document, copy or extract.

(2) In subparagraph (1)(f) "in the person's own right" means not merely in the person's capacity as a servant or agent of another person.

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2019/001**Exercise of powers: general.**

6.(1) Any power exercisable by an authorised officer under this Schedule may be exercised by a person acting under the officer's authority.

(2) An authorised officer, or a person acting under the officer's authority, must, if requested to do so, produce evidence of his authority before exercising any power conferred by this Schedule.

(3) An authorised officer may exercise any power under paragraph 2 in relation to-

- (a) a ship within the seaward limits of BGTW;
- (b) a ship registered in Gibraltar while it is on the high seas; or
- (c) an aircraft or vehicle in Gibraltar.

(4) But such a power may not be exercised in relation to a ship falling within subparagraph (5) unless-

- (a) in the case of a ship falling only within subparagraph (5)(a), Gibraltar is entitled under international law to exercise the power without the consent of the flag State; or
- (b) in any other case, the Minister has authorised the exercise of the power.

(5) A ship falls within this subparagraph if it is-

- (a) a ship flying the flag of, or registered in, a State or territory other than Gibraltar;
- (b) a warship that belongs to a government of a State or territory other than Gibraltar; or
- (c) any other ship that is being used by such a government only for non-commercial purposes.

(6) The Minister may authorise the exercise of a power under subparagraph (4)(b) only if the flag State has consented to Gibraltar exercising the power (whether generally or in relation to the ship in question).

(7) In giving such authority, the Minister must impose such conditions or limitations on the exercise of the power as are necessary to give effect to any conditions or limitations imposed by the flag State.

(8) Anything done in accordance with this Schedule is not to be treated as a breach of any restriction imposed by statute or otherwise.

(9) This Schedule is without prejudice to any other provision of law conferring powers, imposing restrictions or enabling restrictions to be imposed in respect of ships, aircraft or vehicles.

Interpretation.

7. In this Schedule-

“authorised officer” means-

- (a) a police or customs officer;
- (b) a person authorised by the Minister for the purposes of this Schedule, whether generally or in a particular case;

“high seas” means the seas that are not within the seaward limits of-

- (a) BGTW; or
- (b) the territorial sea adjacent to a State or territory outside Gibraltar; and

“justice of the peace” includes other competent judicial authorities in Gibraltar responsible for granting search warrants.

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Paragraph 3(1)

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