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AN ACT TO PROVIDE FOR THE EXTRADITION OF PERSONS PURSUANT TO ANY CONVENTIONS, TREATIES, BILATERAL OR MULTILATERAL AGREEMENTS THAT APPLY TO AND HAVE BEEN EXTENDED TO GIBRALTAR OR ANY EXTRADITION ARRANGEMENT OR AGREEMENTS WHICH HAVE BEEN ENTERED INTO BY THE UNITED KINGDOM AND EXTENDED TO GIBRALTAR AND FOR CONNECTED PURPOSES.

## **Part 1 Preliminary**

### **Title and commencement.**

- 1.(1) This Act may be cited as the Extradition Act 2018.
- (2) This Act comes into operation on the day appointed by the Government.
- (3) Different dates may be appointed under section (2) for different provisions and for different purposes.

### **Application.**

- 2.(1) Subject to subsection (3), this Act applies for the purpose of enabling the execution of extradition requests-
  - (a) issued by a State or Territory pursuant to any Treaty or Convention which applies to Gibraltar;
  - (b) issued in accordance with any bilateral extradition agreement entered into by Gibraltar and another State or Territory.
- (2) This Act applies for the purpose of Gibraltar issuing extradition requests to States or Territories which are parties to Conventions or Treaties or bilateral or multilateral agreements on extradition.
- (3) The provisions of this Act are not to be construed as imposing a limitation on proceedings instituted under-
  - (a) the Fugitive Offenders Act 2002;
  - (b) the European Arrest Warrant Act 2004; and
  - (c) any other extradition enactment applicable in Gibraltar.
- (4) This Act shall apply in relation to any offence, whether committed, or alleged to have been committed, before or after the commencement of this Act.

**Interpretation.**

3.(1) In this Act, unless the context otherwise requires–

“bilateral extradition agreements” means an agreement between Gibraltar and an overseas country as extended to Gibraltar by the United Kingdom in relation to the extradition of persons;

“Central Authority in Gibraltar” means the Chief Secretary;

“extradition arrest power” means–

- (a) an arrest warrant issued under section 7; or
- (b) a provisional warrant under section 9;

“European arrest warrant” has the meaning given in section 2 of the European Arrest Warrant Act 2004;

“Government” means Her Majesty’s Government of Gibraltar;

“Magistrate” means the Stipendiary Magistrate or the Additional Stipendiary Magistrate;

“Minister” means the Minister with responsibility for Justice;

“Member State” means a Member State of the European Union;

“Requesting State” means the State requesting the extradition; and

“State” means a State or Territory, other than a Member State of the European Union, which is a party to a Convention, Treaty or bilateral or multilateral agreement on extradition or contains provisions on extradition.

(2) Words denoting the singular shall also include the plural.

**Central Authority.**

4. The Central Authority for the purposes of this Act shall be the Chief Secretary.

**Part 2****Extradition to Requesting States as a result of the Treaties,  
International Conventions and Agreements that apply to Gibraltar***Introduction*

## **Extradition request and certificate.**

5.(1) Subject to subsection (2) and (3), the Central Authority shall issue a certificate under this section if he receives a valid request for the extradition of a person who is in Gibraltar.

(2) But subsection (1) does not apply if the Central Authority decides under section 62 that the request is not to be proceeded with.

(3) A request for a person's extradition is valid if-

- (a) it contains the statement referred to in subsection (4); and
- (b) it is made in the approved way.

(4) The statement is one that the person-

- (a) is accused in the Requesting State of the commission of an offence specified in the request; or
- (b) is alleged to be unlawfully at large after conviction by a court in the Requesting State of an offence specified in the request.

(5) A request for extradition to a British Overseas Territory is made in the approved way if it is made by or on behalf of the person administering the Territory.

(6) A request for extradition to any other Requesting State is made in the approved way if it is made-

- (a) by an authority of the Requesting State which the Central Authority believes has the function of making requests for extradition in that State; or
- (b) by a person recognised by the Central Authority as a diplomatic or consular representative of the Requesting State.

(7) A certificate under this section must-

- (a) certify that the request is made in the approved way;
- (b) identify how the Requesting State in question is a party to an international convention and treaty or a bilateral extradition agreement; and
- (c) how the relevant international convention, treaty or measure was extended to Gibraltar.

(8) If a certificate is issued under this section the Central Authority must send these documents to the magistrates' court-

- (a) the request;
- (b) the certificate; and
- (c) a copy of the international convention, treaty, agreement or instrument.

*Transmission of requests for extradition*

**Transmission of request to the Central Authority.**

6. The transmission of an extradition request to the Central Authority shall be in the following manner-

- (a) where the request for extradition is in a language other than the English language, a certified translation of the request into English must be transmitted with the request; and
- (b) copies of the request for extradition and where appropriate a translation of, may be transmitted by means of a facsimile machine or any other secure means capable of producing written records allowing for the Central Authority in Gibraltar or the magistrates' court to establish its authenticity.

*Arrest*

**Arrest warrant following extradition request.**

7.(1) This section applies if the Central Authority transmits documents to the magistrates' court under section 5.

(2) The Magistrate may issue a warrant for the arrest of the person whose extradition is requested if the Magistrate has reasonable grounds for believing that-

- (a) the offence in respect of which extradition is requested is an extradition offence; and
- (b) there is evidence falling within subsection (3).

(3) The evidence is-

- (a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the Magistrate's jurisdiction, if the person whose extradition is requested is accused of the commission of the offence; or
- (b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the Magistrate's jurisdiction, if the person whose extradition is requested is alleged to be unlawfully at large after conviction of the offence.

(4) A warrant issued under this section may-

- (a) be executed by any person to whom it is directed or by any police officer or customs officer;
- (b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at time of the arrest.

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

## **Person arrested under section 7.**

8.(1) This section applies if a person is arrested under a warrant issued under section 7.

(2) A copy of the warrant must be given to the person as soon as practicable after his arrest.

(3) The person must be brought as soon as practicable before the magistrates' court.

(4) But subsection (3) does not apply if-

- (a) the person is granted bail by a police officer following his arrest; or
- (b) the Central Authority decides under section 62 (competing extradition requests) that the request for the person's extradition is not to be proceeded with.

(5) If subsection (2) is not complied with and the person applies to the Magistrate to be discharged, the Magistrate may order his discharge.

(6) If subsection (3) is not complied with and the person applies to the Magistrate to be discharged, the Magistrate must order his discharge.

(7) When the person first appears or is brought before the magistrates' court, the Magistrate must-

- (a) inform him of the contents of the request for his extradition;
- (b) give him the required information about consent; and
- (c) remand him in custody or on bail.

(8) The required information about consent is-

- (a) that the person may consent to his extradition to the Requesting State to which his extradition is requested;
- (b) an explanation of the effect of consent and the procedure that will apply if he gives consent; and
- (c) that consent must be given in writing and is irrevocable.

(9) If the Magistrate remands the person in custody he may later grant bail.

**Provisional warrant.**

9.(1) This section applies if a justice of the peace is satisfied on information in writing and on oath that a person within subsection (2)-

- (a) is or is believed to be in Gibraltar; or
- (b) is or is believed to be on his way to Gibraltar.

(2) A person is within this subsection if-

- (a) he is accused in a Requesting State of the commission of an offence; or
- (b) he is alleged to be unlawfully at large after conviction of an offence by a court in that State.

(3) The justice of the peace may issue a warrant for the arrest of a person (provisional warrant) if he has reasonable grounds for believing that-

- (a) the offence of which the person is accused or has been convicted is an extradition offence; and
- (b) there is written evidence falling within subsection (4).

(4) The evidence is-

- (a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the justice's jurisdiction, if the person in respect of whom the warrant is sought is accused of the commission of the offence; or
- (b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the justice's jurisdiction, if the person in respect of whom the warrant is sought is alleged to be unlawfully at large after conviction of the offence.

(5) A warrant issued under this section may be executed-

- (a) by any person to whom it is directed or by a police officer or customs officer;
- (b) be executed if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.

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

## **Person arrested under provisional warrant.**

10.(1) This section applies if a person is arrested under a provisional warrant.

(2) A copy of the warrant must be given to the person as soon as practicable after his arrest.

(3) The person must be brought as soon as practicable before the magistrates' court.

(4) But subsection (3) does not apply if-

- (a) the person is granted bail by a police officer following his arrest; or
- (b) in the case where the Central Authority has received a valid request for the person's extradition, the Central Authority decides under section 62 that the request is not to be proceeded with.

(5) If subsection (2) is not complied with and the person applies to the Magistrate to be discharged, the Magistrate may order his discharge.

(6) If subsection (3) is not complied with and the person applies to the Magistrate to be discharged, the Magistrate must order his discharge.

(7) When the person first appears or is brought before the Magistrate, the Magistrate must-

- (a) inform him that he is accused of the commission of an offence in the Requesting State or that he is alleged to be unlawfully at large after conviction of an offence by a court in that State;
- (b) give him the required information about consent; and
- (c) remand him in custody or on bail.

(8) The required information about consent is-

- (a) that the person may consent to his extradition to the Requesting State in which he is accused of the commission of an offence or is alleged to have been convicted of an offence;
- (b) an explanation of the effect of consent and the procedure that will apply if he gives consent; and
- (c) that consent must be given in writing and is irrevocable.

(9) If the Magistrate remands the person in custody he may later grant bail.

(10) The Magistrate must order the person's discharge if the documents referred to in section 5(8) are not received by the Magistrate within the required period.

(11) The required period is 45 days starting with the day on which the person was arrested.

#### *The extradition hearing*

#### **Date of extradition hearing: arrest under warrant.**

11.(1) When a person arrested under a warrant issued under section 7 first appears or is brought before the magistrates' court, the Magistrate must fix a date on which the extradition hearing is to begin.

(2) The date fixed under subsection (1) must not be later than the end of the permitted period, which is 2 months starting with the date on which the person first appears or is brought before the magistrates' court.

(3) If before the date fixed under subsection (1) (or this subsection) a party to the proceedings applies to the Magistrate for a later date to be fixed and the

Magistrate believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.

(4) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the Magistrate to be discharged, the Magistrate must order his discharge.

### **Date of extradition hearing: arrest under provisional warrant.**

12.(1) Subsection (2) applies if-

- (a) a person is arrested under a provisional warrant under section 9; and
- (b) the documents referred to in section 5(8) are received by the Magistrate within the period required under section 10(11).

(2) The Magistrate must fix a date on which the extradition hearing is to begin.

(3) The date fixed under subsection (2) must not be later than the end of the permitted period, which is 2 months starting with the date on which the Magistrate receives the documents.

(4) If before the date fixed under subsection (2) (or this subsection) a party to the proceedings applies to the Magistrate for a later date to be fixed and the Magistrate believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.

(5) If the extradition hearing does not begin on or before the date fixed under this subsection and the person applies to the Magistrate to be discharged, the Magistrate must order his discharge.

### **Magistrates' powers at extradition hearing.**

13.(1) At the extradition hearing, the Magistrate has the same powers (as nearly as may be) as the magistrate court would have if the proceedings were the summary trial of an information against the person whose extradition is requested.

(2) If the Magistrate adjourns the extradition hearing he must remand the person in custody or on bail.

(3) If the Magistrate remands the person in custody he may later grant bail.

### **Initial stages of extradition hearing.**

14.(1) This section applies if a person alleged to be the person whose extradition is requested appears or is brought before the Magistrate for the extradition hearing.

(2) The Magistrate must decide whether the documents sent to him by the Central Authority consist of (or include)-

- (a) the documents referred to in section 5(8);
- (b) particulars of the person whose extradition is requested;
- (c) particulars of the offence specified in the request;
- (d) in the case of a person accused of an offence, a warrant for his arrest issued in the Requesting State; and
- (e) in the case of a person alleged to be unlawfully at large after conviction of an offence, a certificate issued in the Requesting State of the conviction and (if he has been sentenced) of that sentence.

(3) If the Magistrate decides the question in subsection (2) in the negative he must order the person's discharge.

(4) If the Magistrate decides that question in the affirmative he must decide whether-

- (a) the person appearing or brought before him is the person whose extradition is requested;
- (b) the offence specified in the request is an extradition offence; and
- (c) copies of the documents sent to the Magistrate by the Central Authority have been served on the person.

(5) The Magistrate must decide the question in subsection 4(a) on a balance of probabilities.

(6) If the Magistrate decides any of the questions in subsection (4) in the negative he must order the person's discharge.

(7) If the Magistrate decides those questions in the affirmative he must proceed under section 17.

(8) The reference in subsection 2(d) to a warrant for a person's arrest includes a reference to a judicial document authorising his arrest.

**Person charged with offence in Gibraltar.**

15.(1) This section applies if at any time in the extradition hearing the Magistrate is informed that the person is charged with an offence in Gibraltar.

(2) The Magistrate must adjourn the extradition hearing until one of these occurs-

- (a) the charge is disposed of;
- (b) the charge is withdrawn;
- (c) proceedings in respect of the charge are discontinued; or
- (d) an order is made for the charge to lie on the file.

(3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the Magistrate may adjourn the extradition hearing until the sentence is served.

(4) If before he adjourns the extradition hearing under subsection (2) the magistrate has decided under section 17 whether the person's extradition is barred by reason of the rule against double jeopardy, the Magistrate must decide that question again after the resumption of the hearing.

### **Person serving sentence in Gibraltar.**

16.(1) This section applies if at any time in the extradition hearing the Magistrate is informed that the person is serving a sentence of imprisonment or another form of detention in Gibraltar.

(2) The Magistrate may adjourn the extradition hearing until the sentence has been served.

### **Bars to extradition.**

17.(1) If the Magistrate is required to proceed under this section he must decide whether the person's extradition to the Requesting State is barred by reason of-

- (a) the rule against double jeopardy;
- (b) extraneous considerations;
- (c) the passage of time; or
- (d) hostage-taking considerations.

(2) Sections 18 to 21 apply for the interpretation of subsection (1).

(3) If the Magistrate decides any of the questions in subsection (1) in the affirmative he must order the person's discharge.

(4) If the Magistrate decides those questions in the negative and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, the Magistrate must proceed under section 22.

(5) If the Magistrate decides those questions in the negative and the person is alleged to be unlawfully at large after conviction of the extradition offence, the Magistrate must proceed under section 23.

**Rule against double jeopardy.**

18. A person's extradition to a Requesting State is barred by reason of the rule against double jeopardy if (and only if) it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction if he were charged with the extradition offence in Gibraltar.

**Extraneous considerations.**

19. A person's extradition to a Requesting State is barred by reason of extraneous considerations if (and only if) it appears that-

- (a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions; or
- (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

**Passage of time.**

20. A person's extradition to a Requesting State is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have become unlawfully at large (as the case may be).

**Hostage-taking considerations.**

21.(1) A person's extradition to a Requesting State is barred by reason of hostage-taking considerations if (and only if) the Requesting State is a party to the Hostage-taking Convention and it appears that-

- (a) if extradited he might be prejudiced at his trial because communication between him and the appropriate authorities would not be possible;
- (b) the act or omission constituting the extradition offence also constitutes an offence under section 24 of the Terrorism Act 2005.

(2) The appropriate authorities are the authorities of the Requesting State which are entitled to exercise rights of protection in relation to him.

(3) A certificate issued by the Central Authority that the Requesting State is a party to the Hostage-taking Convention is conclusive evidence of that fact for the purposes of subsection (1).

(4) The Hostage-taking Convention is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979 which extends to Gibraltar.

### **Case where person has not been convicted.**

22.(1) If the Magistrate is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.

(2) In deciding the question in subsection (1), the Magistrate may treat a statement made by a person in a document as admissible evidence of a fact if-

- (a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders; and
- (b) direct oral evidence by the person of the fact would be admissible.

(3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the Magistrate must in particular have regard-

- (a) to the nature and source of the document;
- (b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the Magistrate to be relevant, it is likely that the document is authentic;

- (c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;
- (d) to the relevance of the evidence that the statement appears to supply to any issue likely to have been determined by the Magistrate in deciding the question in subsection (1); and
- (e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.

(4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purpose of subsection (2).

(5) If the Magistrate decides the question in subsection (1) in the negative he must order the person's discharge.

(6) If the Magistrate decides that question in the affirmative he must proceed under section 25.

(7) If the Magistrate is required to proceed under this section-

- (a) the Magistrate must not decide under subsection (1); and
- (b) he must proceed under section 25.

**Case where person has been convicted.**

23.(1) If the Magistrate is required to proceed under this section he must decide whether the person was convicted in his presence.

(2) If the Magistrate decides the question in subsection (1) in the affirmative he must proceed under section 25.

(3) If the Magistrate decides that question in the negative he must decide whether the person deliberately absented himself from his trial.

(4) If the Magistrate decides the question in subsection (3) in the affirmative he must proceed under section 25.

(5) If the Magistrate decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.

(6) If the Magistrate decides the question in subsection (5) in the affirmative he must proceed under section 24.

(7) If the Magistrate decides that question in the negative he must order the person's discharge.

(8) The Magistrate must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights-

- (a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required; and
- (b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

### **Conviction in person's absence.**

24.(1) If the Magistrate is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.

(2) In deciding the question in subsection (1) the Magistrate may treat a statement made by a person in a document as admissible evidence of a fact if-

- (a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders; and
- (b) direct oral evidence by the person of the fact would be admissible.

(3) In deciding whether to treat a statement made by a person in a document as admissible evidence of fact, the Magistrate must in particular have regard-

- (a) to the nature and source of the document;
- (b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the Magistrate to be relevant, it is likely that the document is authentic;

- (c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of fact;
- (d) to the relevance of the evidence that the statement appears to supply to an issue likely to have to be determined by the Magistrate in deciding the question in subsection (1); and
- (e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.

(4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).

(5) If the Magistrate decides the question in subsection (1) in the negative he must order the person's discharge.

(6) If the Magistrate decides that question in the affirmative he must proceed under section 25.

(7) If the Magistrate is required to proceed under this section with a request for extradition to the State to which extradition is requested-

- (a) the Magistrate must not decide under subsection (1); and
- (b) he must proceed under section 25.

### **Human rights.**

25.(1) If the Magistrate is required to proceed under this section (by virtue of section 22, 23 or 24) he must decide whether the person's extradition would be compatible with the Gibraltar Constitution.

(2) If the Magistrate decides the question in subsection (1) in the negative he must order the person's discharge.

(3) If the Magistrate decides that question in the affirmative he must send the case to the Central Authority in Gibraltar for his decision whether the person is to be extradited.

### **Competing extradition claim.**

26.(1) This section applies if at any time in the extradition hearing the Magistrate is informed that the conditions in subsection (2) or (3) are met.

(2) The conditions are-

- (a) that the Central Authority has received another valid request for the person's extradition to a Requesting State;
- (b) the other request has not been disposed of; and
- (c) the Central Authority has made an order under section 62(2) for further proceedings on the request under consideration to be deferred until the other request has been disposed of.

(3) The conditions are that-

- (a) a European Arrest Warrant has been received;
- (b) the warrant has not been disposed of; and
- (c) the Central Authority has made an order under section 103(2) for further proceedings on the request to be deferred until the warrant has been disposed of.

(4) The Magistrate must remand the person in custody or on bail.

(5) If the Magistrate remands the person in custody he may later grant bail.

### **Physical or mental condition.**

27.(1) This section applies if at any time in the extradition hearing it appears to the Magistrate that the condition in subsection (2) is satisfied.

(2) The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.

(3) The Magistrate must-

- (a) order the person's discharge; or
- (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied.

### **Case sent to Central Authority.**

28.(1) This section applies if the Magistrate sends a case to the Central Authority under this Part for his decision whether a person is to be extradited.

(2) The Magistrate must inform the person in ordinary language that-

- (a) he has a right to appeal to the Supreme Court; and
  - (b) if he exercises the right the appeal will not be heard until the Central Authority has made his decision.
- (3) But subsection (2) does not apply if the person has consented to his extradition under section 63.
- (4) The Magistrate must remand the person in custody or on bail-
- (a) to wait for the Central Authority's decision; and
  - (b) to wait for his extradition to the State to which extradition is requested (if the Central Authority orders him to be extradited).
- (5) If the Magistrate remands the person in custody he may later grant bail.

*Central Authority's functions*

**Central Authority's consideration of case.**

29.(1) This section applies if the Magistrate sends a case to the Central Authority under this Part for his decision whether a person is to be extradited.

(2) The Central Authority must decide whether he is prohibited from ordering the person's extradition under any of these sections-

- (a) section 30 (death penalty);
- (b) section 31 (speciality); and
- (c) section 32 (earlier extradition to Gibraltar from another Requesting State).

(3) If the Central Authority decides any of the questions in subsection (2) in the affirmative he must order the person's discharge.

(4) If the Central Authority decides those questions in the negative he must order the person to be extradited to the Requesting State to which his extradition is requested unless-

- (a) he is informed that the request has been withdrawn; or
- (b) he makes an order under section 62(2) or 103(2) for further proceedings on the request to be deferred and the person is discharged under section 104.

(5) In deciding the questions in subsection (2), the Central Authority is not required to consider any representations received by him after the end of the permitted period.

(6) The permitted period is the period of 6 weeks starting with the appropriate day.

## **Death penalty.**

30.(1) The Central Authority must not order a person's extradition to a Requesting State if he could be, will be or has been sentenced to death for the offence concerned in that State.

(2) Subsection (1) does not apply if the Central Authority receives a written assurance which he considers adequate that a sentence of death-

- (a) will not be imposed; or
- (b) will not be carried out (if imposed).

## **Speciality.**

31.(1) The Central Authority must not order a person's extradition to a Requesting State if there are no speciality arrangements with the Requesting State.

(2) But subsection (1) does not apply if the person consented to his extradition under section 63 before his case was sent to the Central Authority.

(3) There are speciality arrangements with a Requesting State if (and only if) under the law of that State or arrangements made between it and Gibraltar a person who is extradited to that State from Gibraltar may be dealt with in that State for an offence committed before his extradition only if-

- (a) the offence is one falling within subsection (4); or
- (b) he is first given an opportunity to leave the Requesting State.

(4) The offences are-

- (a) the offence in respect of which the person is extradited;
- (b) an extradition offence disclosed by the same facts as that offence, other than one in respect of which a sentence of death could be imposed;
- (c) an extradition offence in respect of which the Central Authority consents to the person being dealt with; or

- (d) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.

**Earlier extradition to Gibraltar from other country.**

32.(1) The Central Authority must not order a person's extradition to a Requesting State if-

- (a) the person was extradited to Gibraltar from another Territory (the extraditing Territory);
- (b) under arrangements between Gibraltar and the extraditing Territory, that Territory's consent is required to the person's extradition from Gibraltar to a Requesting State in respect of the extradition offence under consideration; and
- (c) that consent has not been given on behalf of the extraditing Territory.

**Deferral: person charged with offence in Gibraltar.**

33.(1) This section applies if-

- (a) the Magistrate sends a case to the Central Authority under this Part for his decision whether a person is to be extradited; and
- (b) the person is charged with an offence in Gibraltar.

(2) The Central Authority must not make a decision with regard to the person's extradition until one of these occurs-

- (a) the charge is disposed of;
- (b) the charge is withdrawn;
- (c) proceedings in respect of the charge are discontinued;
- (d) an order is made for the charge to lie on file.

(3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the Central Authority may defer making a decision with regard to the person's extradition until the sentence has been served.

**Deferral: person serving sentence in Gibraltar.**

34.(1) This section applies if-

- (a) the Magistrate sends a case to the Central Authority under this Part for his decision whether a person is to be extradited; and
- (b) the person is in custody serving a sentence of imprisonment or another form of detention in Gibraltar.

(2) The Central Authority may defer making a decision with regard to the person's extradition until the sentence has been served.

**Time limit for order for extradition or discharge.**

35.(1) This section applies if-

- (a) the Magistrate sends a case to the Central Authority under this Part for his decision whether a person is to be extradited; and
- (b) within the required period the Central Authority does not make an order for the person's extradition or discharge.

(2) If the person applies to the Supreme Court to be discharged, the court must order his discharge.

(3) The required period is the period of 2 months starting with the appropriate day.

(4) If before the required period ends the Central Authority applies to the Supreme Court for it to be extended the Supreme Court may make an order accordingly; and this subsection may apply more than once.

**Information.**

36.(1) If the Central Authority orders a person's extradition under this Part he must-

- (a) inform the person of the order;
- (b) inform him in ordinary language that he has a right of appeal to the Supreme Court; and
- (c) inform a person acting on behalf of the Requesting State of the order.

(2) But subsection (1)(b) does not apply if the person has consented to his extradition under section 63.

(3) If the Central Authority orders a person's extradition under this Part and he has received an assurance such as is mentioned in section 30(2), he must give the person a copy of the assurance when he informs him under subsection (1) of the order.

(4) If the Central Authority orders a person's discharge under this Part he must-

- (a) inform him of the order; and
- (b) inform a person acting on behalf of the Requesting State of the order.

**Making of order for extradition or discharge.**

37.(1) An order to which this section applies must be made under the hand of one of these-

- (a) the Central Authority; or
- (b) the Minister.

(2) This section applies to-

- (a) an order under section 29 for a person's extradition; and
- (b) an order under section 29 or 59 for a person's discharge.

**The appropriate day.**

38.(1) This section applies for the purpose of sections 29 and 35 if the Magistrate sends a case to the Central Authority under this Part for his decision whether a person is to be extradited.

(2) If the person is charged with an offence in Gibraltar, the appropriate day is the day on which one of these occurs-

- (a) the charge is disposed of;
- (b) the charge is withdrawn;
- (c) proceedings in respect of the charge are discontinued; or
- (d) an order is made for the charge to lie on the file.

(3) If under section 33(3) and 34(2) the Central Authority defers making a decision until the person has served a sentence, the appropriate day is the day on which the person finishes serving the sentence.

(4) If section 62 applies in relation to the request for the person's extradition (the request concerned) the appropriate day is-

- (a) the day on which the Central Authority makes an order under that section, if the order is for proceedings on the other request to be deferred;
- (b) the day on which an order under section 104 is made, if the order under section 62 is for proceedings on the request concerned to be deferred and the order under section 104 is for the proceedings to be resumed.

(5) If section 103 applies in relation to the request for the person's extradition, the appropriate day is-

- (a) the day on which the Central Authority makes an order under that section, if the order is for proceedings on the warrant to be deferred; or
- (b) the day on which an order under section 104 is made, if the order under section 103 is for proceedings on the request concerned to be deferred and the order under section 104 is for the proceedings to be resumed.

(6) If more than one of subsections (2) and (5) applies, the appropriate day is the latest of the days found under the subsections which apply.

(7) In any other case, the appropriate day is the day on which the Magistrate sends the case to the Central Authority for his decision whether the person is to be extradited.

## *Appeals*

### **Appeal where case sent to Central Authority.**

39.(1) If the Magistrate sends a case to the Central Authority under this Part for his decision whether a person is to be extradited, the person may appeal to the Supreme Court against the relevant decision.

(2) But subsection (1) does not apply if the person consented to his extradition under section 63 before his case was sent to the Central Authority.

(3) The relevant decision is the decision that resulted in the case being sent to the Central Authority.

(4) An appeal under this section may be brought on a question of law or fact.

(5) If an appeal is brought under this section before the Central Authority has decided whether the person is to be extradited the appeal must not be heard until after the Central Authority has made his decision.

(6) If the Central Authority orders the person's discharge the appeal must not be proceeded with.

(7) No appeal may be brought under this section if the Central Authority has ordered the person's discharge.

(8) If the notice of an appeal under section 46 against the decision which resulted in the order for the person's discharge is given in accordance with subsection (5) of that section-

- (a) subsections (6) and (7) do not apply; and
- (b) no appeal may be brought under this section if the Supreme Court has made its decision on the appeal.

(9) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the Central Authority informs the person under section 36(1) or (4) of the order he has made in respect of the person.

#### **Court's powers on appeal under section 39.**

40.(1) On an appeal under section 39 the Supreme Court may-

- (a) allow the appeal;
- (b) direct the Magistrate to decide again a question (or questions) which he decided at the extradition hearing; or
- (c) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that-

- (a) the Magistrate ought to have decided a question before him at the extradition hearing differently; and

- (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.

(4) The conditions are that-

- (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
- (b) the issue or evidence would have resulted in the Magistrate deciding a question before him at the extradition hearing differently; and
- (c) if he had decided the question in that way, he would have been required to order the person's discharge.

(5) If the court allows the appeal it must-

- (a) order the person's discharge; and
- (b) quash the order for his extradition.

(6) If the Magistrate comes to a different decision on any question that is the subject of a direction under subsection (1)(b) he must order the person's discharge.

(7) If the Magistrate comes to the same decision as he did at the extradition hearing on the question that is (or all the questions that are) the subject of a direction under subsection (1)(b) the appeal must be taken to have been dismissed by a decision of the Supreme Court.

## **Appeal against discharge at extradition hearing.**

41.(1) If at the extradition hearing the Magistrate orders a person's discharge, an appeal to the Supreme Court may be brought on behalf of the Requesting State against the relevant decision.

(2) But subsection (1) does not apply if the order for the person's discharge was under section 58.

(3) The relevant decision is the decision which resulted in the order for the person's discharge.

(4) An appeal under this section may be brought on a question of law or fact.

(5) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the order for the person's discharge is made.

**Court's powers on appeal under section 41.**

42.(1) On appeal under section 41 the Supreme Court may-

- (a) allow the appeal;
- (b) direct the Magistrate to decide the relevant question again; or
- (c) dismiss the appeal.

(2) A question is the relevant question if the Magistrates' decision on it resulted in the order for the person's discharge.

(3) The court may allow the appeal only if the conditions in subsection (4) or the conditions in subsection (5) are satisfied.

(4) The conditions are that-

- (a) the Magistrate ought to have decided the relevant question differently; and
- (b) if he had decided the question in the way he ought to have done, he would not have been required to order the person's discharge.

(5) The conditions are that-

- (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
- (b) the issue or evidence would have resulted in the Magistrate deciding the relevant question differently; and
- (c) if he had decided the question in that way, he would not have been required to order the person's discharge.

(6) If the court allows the appeal it must-

- (a) quash the order discharging the person;
- (b) remit the case to the Magistrate; and

- (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.

(7) If the court makes a direction under subsection (1)(b) and the Magistrate decides the relevant question differently he must proceed as he would have been required to do if he had decided that question differently at the extradition hearing.

(8) If the court makes a direction under subsection (1)(b) and the Magistrate does not decide the relevant question differently the appeal must be taken to have been dismissed by a decision of the Supreme Court.

### **Detention pending conclusion of appeal under section 41.**

43.(1) This section applies if immediately after the Magistrate orders the person's discharge the Magistrate is informed on behalf of the Requesting State of an intention to appeal under section 41.

(2) The Magistrate must remand the person in custody or on bail while the appeal is pending.

(3) If the person is remanded in custody, the Magistrate may later grant bail.

(4) An appeal under section 41 ceases to be pending at the earliest of these times-

- (a) when the proceedings on the appeal are discontinued;
- (b) when the Supreme Court dismisses the appeal, if the court is not immediately informed on behalf of the Requesting State of an intention to apply for leave to appeal to the Privy Council;
- (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Privy Council against the decision of the Supreme Court on the appeal is granted;
- (d) when there is no further step that can be taken on behalf of the Requesting State in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).

### **Appeal against extradition order.**

44.(1) If the Central Authority orders a person's extradition under this Part, the person may appeal to the Supreme Court against the order.

(2) But subsection (1) does not apply if the person has consented to his extradition under section 63.

(3) An appeal under this section may be brought on a question of law or fact.

(4) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the Central Authority informs the person of the order under section 36(1).

**Court's powers on appeal under section 44.**

45.(1) On an appeal under section 44 the Supreme Court may-

- (a) allow the appeal; or
- (b) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that-

- (a) the Central Authority ought to have decided a question before him differently; and
- (b) if he had decided the question in the way he ought to have done, he would not have ordered the person's extradition.

(4) The conditions are that-

- (a) an issue is raised that was not raised when the case was being considered by the Central Authority or information is available that was not available at that time;
- (b) the issue or information would have resulted in the Central Authority deciding a question before him differently; and
- (c) if he had decided the question in that way, he would not have ordered the person's extradition.

(5) If the court allows the appeal it must-

- (a) order the person's discharge; and
- (b) quash the order for his extradition.

## **Appeal against discharge by Central Authority.**

46.(1) If the Central Authority makes an order for a person's discharge under this Part, an appeal to the Supreme Court may be brought on behalf of the Requesting State against the relevant decision.

(2) But subsection (1) does not apply if the order for the person's discharge was under section 59.

(3) The relevant decision is the decision which resulted in the order for the person's discharge.

(4) An appeal under this section may be brought on a question of law or fact.

(5) Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which (under section 36(4)) the Central Authority informs a person acting on behalf of the Requesting State of the order.

## **Court's powers on appeal under section 46.**

47.(1) On appeal under section 46 the Supreme Court may-

- (a) allow the appeal; or
- (b) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that-

- (a) the Central Authority ought to have decided a question before him differently; and
- (b) if he had decided the question in the way he ought to have done, he would have ordered the person's extradition.

(4) The conditions are that-

- (a) an issue is raised that was not raised when the case was being considered by the Central Authority or information is available that was not available at that time;
- (b) the issue or information would have resulted in the Central Authority deciding a question before him differently; and

- (c) if he had decided the question in that way, he would have ordered the person's extradition.

(5) If the court allows the appeal it must-

- (a) quash the order discharging the person; and
- (b) order the person's extradition.

**Detention pending conclusion of appeal under section 46.**

48.(1) This section applies if immediately after the Central Authority orders the person's discharge under this Part the Central Authority is informed on behalf of the Requesting State of an intention to appeal under section 46.

(2) The Magistrate must remand the person in custody or on bail while the appeal is pending.

(3) If the Magistrate remands the person in custody he may later grant bail.

(4) An appeal under section 46 ceases to be pending at the earliest of these times-

- (a) when the proceedings on the appeal are discontinued;
- (b) when the Supreme Court dismisses the appeal, if the court is immediately informed on behalf of the Requesting State of an intention to apply for leave to appeal to the Privy Council;
- (c) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Privy Council against the decision of the Supreme Court on the appeal is granted; or
- (d) when there is no further step that can be taken on behalf of the Requesting State in relation to the appeal (ignoring any power of a court to grant leave to take a step out of time).

**Appeal to the Supreme Court: time limit for start of hearing.**

49.(1) Rules of court must prescribe the period (the relevant period) within which the Supreme Court must begin to hear an appeal under section 39, 41, 44 or 46.

(2) The Supreme Court must begin to hear the appeal before the end of the relevant period.

(3) The Supreme Court may extend the relevant period if it believes it to be in the interests of justice to do so; and this subsection may apply more than once.

(4) The power in subsection (3) may be exercised even after the end of the relevant period.

(5) If subsection (2) is not complied with and the appeal is under section 39 or 44-

- (a) the appeal must be taken to have been allowed by a decision of the Supreme Court;
- (b) the person whose extradition has been ordered must be taken to have been discharged by the Supreme Court; and
- (c) the order for the person's extradition must be taken to have been quashed by the Supreme Court.

(6) If subsection (2) is not complied with and the appeal is under section 41 or 46 the appeal must be taken to have been dismissed by a decision of the Supreme Court.

## **Appeal to Privy Council.**

50.(1) An appeal lies to the Privy Council from a decision of the Supreme Court on an appeal under section 39, 41, 44 or 46.

(2) An appeal under this section lies at the instance of-

- (a) the person whose extradition is requested;
- (b) a person acting on behalf of the Requesting State.

(3) An appeal under this section lies only with the leave of the Supreme Court or the Privy Council.

(4) Leave to appeal under this section must not be granted unless-

- (a) the Supreme Court has certified that there is a point of law of general public importance involved in the decision; and
- (b) it appears to the court granting leave that the point is one which ought to be considered by the Privy Council.

(5) An application to the Supreme Court for leave to appeal under this section must be made before the end of the permitted period, which is 14 days

starting with the day on which the court makes its decision on the appeal to it.

(6) An application to the Privy Council for leave to appeal under this section must be made before the end of the permitted period, which is 14 days starting with the day on which the Supreme Court refuses leave to appeal.

(7) If leave to appeal under this section is granted, the appeal must be brought before the end of the permitted period, which is 28 days starting with the day on which leave is granted.

(8) If subsection (7) is not complied with-

- (a) the appeal must be taken to have been brought; and
- (b) the appeal must be taken to have been dismissed by the Privy Council immediately after the end of the period permitted under that subsection.

(9) These must be ignored for the purposes of subsection (8)(b)-

- (a) any power of a court to extend the period permitted for bringing the appeal; and
- (b) any power of a court to grant leave to take a step out of time.

(10) The Supreme Court may grant bail to a person appealing under this section or applying for leave to appeal under this section.

#### **Powers of Privy Council on appeal under section 50.**

51.(1) On appeal under section 50 the Privy Council may-

- (a) allow the appeal; or
- (b) dismiss the appeal.

(2) Subsection (3) applies if-

- (a) the person whose extradition is requested brings an appeal under section 50; and
- (b) the Privy Council allows the appeal.

(3) The Privy Council must-

- (a) order the person's discharge; and

- (b) quash the order for his extradition, if the appeal was against a decision of the Supreme Court to dismiss an appeal under section 39 or 44 or to allow an appeal under section 46.

(4) Subsection (5) applies if-

- (a) the Supreme Court allows an appeal under section 39 or 44 by the person whose extradition is requested or dismisses an appeal under section 46 by a person acting on behalf of the Requesting State;
- (b) a person acting on behalf of the Requesting State brings an appeal under section 50 against the decision of the Supreme Court; and
- (c) the Privy Council allows the appeal.

(5) The Privy Council must-

- (a) quash the order discharging the person made by the Supreme Court under section 40(5) or 45(5) or by the Central Authority under this Part; and
- (b) order the person to be extradited to the Requesting State.

(6) Subsection (7) applies if-

- (a) the Supreme Court dismisses an appeal under section 41 against a decision made by the Magistrate at the extradition hearing;
- (b) a person acting on behalf of the Requesting State brings an appeal under section 50 against the decision of the Supreme Court; and
- (c) the Privy Council allows the appeal.

(7) The Privy Council must-

- (a) quash the order of the Magistrate discharging the person whose extradition is requested;
- (b) remit the case to the Magistrate; and
- (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.

(8) A question is the relevant question if the Magistrates' decision on it resulted in the order for the person's discharge.

**Appeals: general**

52. A decision under this Part of the Magistrate or Central Authority may be questioned in legal proceedings only by means of an appeal under this Part.

*Time for extradition*

**Extradition where no appeal.**

53.(1) This section applies if-

- (a) the Central Authority orders a person's extradition to a Requesting State under this Part; and
- (b) no notice of appeal under section 39 or 44 is given before the end of the permitted period, which is 14 days starting with the day on which the Central Authority informs the person under section 36(1) that he has ordered his extradition.

(2) The person must be extradited to the Requesting State before the end of the required period, which is 28 days starting with the day on which the Central Authority makes the order.

(3) If subsection (2) is not complied with and the person applies to the Magistrate to be discharged the Magistrate must order his discharge, unless reasonable cause is shown for the delay.

(4) These must be ignored for the purposes of subsection (1)(b)-

- (a) any power of a court to extend the period permitted for giving notice of appeal; and
- (b) any power of a court to grant leave to take a step out of time.

**Extradition following appeal.**

54.(1) This section applies if-

- (a) there is an appeal to the Supreme Court under section 39, 44 or 46 against a decision or order relating to a person's extradition to a Requesting State; and
- (b) the effect of the decision of the relevant court on the appeal is that the person is to be extradited there.

(2) The person must be extradited to that Requesting State before the end of the required period, which is 28 days starting with-

- (a) the day on which the decision of the relevant court on the appeal becomes final; or
- (b) the day on which proceedings on the appeal are discontinued.

(3) The relevant court is-

- (a) the Supreme Court, if there is no appeal to the Privy Council against the decision of the Supreme Court on the appeal; and
- (b) the Privy Council, if there is such an appeal.

(4) The decision of the Supreme Court on the appeal becomes final-

- (a) when the period permitted for applying to the Supreme Court for leave to appeal to the Privy Council ends, if there is no such application;
- (b) when the period permitted for applying to the Privy Council for leave to appeal to it ends, if the Supreme Court refuses leave to appeal and there is no application to the Privy Council for leave to appeal;
- (c) when the Privy Council refuses leave to appeal to it; or
- (d) at the end of the permitted period, which is 28 days starting with the day on which leave to appeal to the Privy Council is granted, if no such appeal is brought before the end of that period.

(5) These must be ignored for the purposes of subsection (4)-

- (a) any power of a court to extend the period permitted for applying for leave to appeal; and
- (b) any power of a court to grant leave to take a step out of time.

(6) The decision of the Privy Council on the appeal becomes final when it is made.

(7) If subsection (2) is not complied with and the person applies to the Magistrate to be discharged the Magistrate must order his discharge, unless reasonable cause is shown for the delay.

**Undertaking in relation to person serving sentence in Gibraltar.**

55.(1) This section applies if-

- (a) the Central Authority orders a person's extradition to a Requesting State under this Part; and
- (b) the person is serving a sentence of imprisonment or another form of detention in Gibraltar.

(2) The Central Authority may make the order for extradition subject to the condition that extradition is not to take place before he receives an undertaking given on behalf of the Requesting State in terms specified by him.

(3) The terms which may be specified by the Central Authority in relation to a person accused in a Requesting State of the commission of an offence include terms-

- (a) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the Requesting State; and
- (b) that the person be returned to Gibraltar to serve the remainder of his sentence on the conclusion of those proceedings.

(4) The terms which may be specified by the Central Authority in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in the Requesting State include terms that the person be returned to Gibraltar to serve the remainder of his sentence after serving any sentence imposed on him in the Requesting State for-

- (a) the offence; and
- (b) any other offence in respect of which he is permitted to be dealt with in the Requesting State.

(5) Subsections (6) and (7) apply if the Central Authority makes an order for extradition subject to a condition under subsection (2).

(6) If the Central Authority does not receive the undertaking before the end of the period of 21 days starting with the day on which he makes the order and the person applies to the Supreme Court to be discharged, the court must order his discharge.

(7) If the Central Authority receives the undertaking before the end of that period-

- (a) in a case where section 53 applies, the required period for the purposes of section 53(2) is 28 days starting with the day on which the Central Authority receives the undertaking; and
- (b) in a case where section 54 applies, the required period for the purposes of section 54(2) is 28 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the Central Authority receives the undertaking.

## **Extradition following deferral for competing claim.**

56.(1) This section applies if-

- (a) an order is made under this Part for a person to be extradited to a Requesting State in pursuance of a request for his extradition;
- (b) before the person is extradited to the country an order is made under section 62(2) or 103(2) for the person's extradition in pursuance of the request to be deferred; and
- (c) the Magistrate makes an order under section 105(2) for the person's extradition in pursuance of the request to cease to be deferred.

(2) In a case where section 53 applies, the required period for the purposes of section 53(2) is 28 days starting with the day on which the order under section 105(2) is made.

(3) In a case where section 54 applies, the required period for the purposes of section 54(2) is 28 days starting with the day on which the decision of the relevant court on the appeal becomes final (within the meaning of that section) or (if later) the day on which the order under section 105(2) is made.

## **Asylum claim.**

57.(1) This section applies if-

- (a) a person whose extradition is requested makes an asylum claim at any time in the relevant period; and
- (b) an order is made under this Part for the person to be extradited in pursuance of the request.

(2) The relevant period is the period-

- (a) starting when a certificate is issued under section 5 in respect of the request; and

- (b) ending when the person is extradited in pursuance of the request.
- (3) The person must not be extradited in pursuance of the request before the asylum claim is finally determined; and sections 53 and 54 have effect subject to this.
- (4) If the asylum claim is allowed, the claim is finally determined when the Head of the Civil Status and Registration Office makes his decision on the claim.
- (5) If the asylum claim is rejected, the claim is finally determined-
- (a) when a decision on the claim is made, if there is no right to appeal against the decision on the claim;
  - (b) when the period permitted for appealing against the decision on the claim ends, if there is such a right but there is no such appeal; or
  - (c) when the appeal against that decision is finally determined or is withdrawn or abandoned, if there is such an appeal.
- (6) An appeal against the decision on an asylum claim is not finally determined for the purposes of subsection (3) at any time when a further appeal or an application for leave to bring a further appeal-
- (a) has been instituted and has not been finally determined or withdrawn or abandoned; or
  - (b) may be brought.
- (7) The remittal of an appeal is not a final determination for the purposes of subsection (6).
- (8) The possibility of an appeal out of time with leave must be ignored for the purposes of subsections (5) and (6).

*Withdrawal of extradition request*

**Withdrawal of request before end of extradition hearing.**

58.(1) This section applies if at any time in the relevant period the Magistrate is informed by the Central Authority that a request for a person's extradition has been withdrawn.

- (2) The relevant period is the period-

- (a) starting when the person first appears or is brought before the Magistrate following his arrest under this Part; and
- (b) ending when the Magistrate orders the person's discharge or sends the case to the Central Authority for his decision whether the person is to be extradited.

(3) The Magistrate must order the person's discharge.

(4) If the person is not before the Magistrate at the time the Magistrate orders his discharge, the Magistrate must inform him of the order as soon as practicable.

### **Withdrawal of request after case sent to the Central Authority.**

59.(1) This section applies if at any time in the relevant period the Central Authority is informed that a request for a person's extradition has been withdrawn.

(2) The relevant period is the period-

- (a) starting when the Magistrate sends the case to the Central Authority for his decision whether the person is to be extradited; and
- (b) ending when the person is extradited in pursuance of the request or discharged.

(3) The Central Authority must order the person's discharge.

### **Withdrawal of request while appeal to Supreme Court pending.**

60.(1) This section applies if at any time in the relevant period the Supreme Court is informed by the Central Authority that a request for a person's extradition has been withdrawn.

(2) The relevant period is the period-

- (a) starting when notice of an appeal to the Supreme Court is given by the person whose extradition is requested or by a person acting on behalf of the Requesting State to which his extradition is requested; and
- (b) ending when proceedings on the appeal are discontinued or the court makes its decision on the appeal.

(3) If the appeal is under section 39 or 44, the court must-

- (a) order the person's discharge; and
- (b) quash the order for his extradition, if the Central Authority has ordered his extradition.

(4) If the appeal is under section 41 or 46, the court must dismiss the appeal.

(5) If the person is not before the court at the time the court orders his discharge, the court must inform him of the order as soon as practicable.

**Withdrawal of request while appeal to Privy Council pending.**

61.(1) This section applies if at any time in the relevant period the Privy Council is informed by the Central Authority that a request for a person's extradition has been withdrawn.

(2) The relevant period is the period-

- (a) starting when leave to appeal to the Privy Council is granted to the person whose extradition is requested or a person acting on behalf of the Requesting State to which his extradition is requested; or
- (b) ending when proceedings on the appeal are discontinued or the Privy Council makes its decision on the appeal.

(3) If the appeal is brought by the person whose extradition is requested the Privy Council must-

- (a) order the person's discharge; or
- (b) quash the order for his extradition, in a case where the appeal was against a decision of the Supreme Court or dismiss an appeal under section 39 or 44.

(4) If the appeal is brought by a person acting on behalf of the Requesting State, the Privy Council must dismiss the appeal.

(5) If the person whose extradition is requested is not before the Privy Council at the time it orders his discharge, the Privy Council must inform him of the order as soon as practicable.

*Competing extradition requests*

**Competing extradition requests.**

62.(1) This section applies if-

- (a) the Central Authority receives a valid request for a person's extradition to a Requesting State;
  - (b) the person is in Gibraltar; and
  - (c) before the person is extradited in pursuance of the request or discharged, the Central Authority receives another valid request for the person's extradition.
- (2) The Central Authority may-
- (a) order proceedings (or further proceedings) on one of the requests to be deferred until the other one has been disposed of, if neither of the requests has been disposed of; or
  - (b) order the person's extradition in pursuance of the request under consideration to be deferred until the other request has been disposed of, if an order for his extradition in pursuance of the request under consideration has been made.
- (3) In applying subsection (2) the Central Authority must take account in particular of these matters-
- (a) the relative seriousness of the offences concerned;
  - (b) the place where each offence was committed (or was alleged to have been committed);
  - (c) the date when each request was received; and
  - (d) whether, in the case of each offence, the person is accused of its commission (but not alleged to have been convicted) or is alleged to be unlawfully at large after conviction.

### *Consent to extradition*

#### **Consent to extradition: general**

63.(1) A person arrested under a warrant issued under section 7 may consent to his extradition to the Requesting State to which his extradition is requested.

(2) A person arrested under a provisional warrant may consent to his extradition to the Requesting State in which he is accused of the commission of an offence or is alleged to have been convicted of an offence.

(3) Consent under this section-

- (a) must be given in writing; and

(b) is irrevocable.

(4) Consent under this section which is given by a person before his case is sent to the Central Authority for the Central Authority's decision whether he is to be extradited must be given before the Magistrate.

(5) Consent under this section which is given in any other case must be given to the Central Authority.

(6) A person may not give his consent under this section before the Magistrate unless-

(a) he is legally represented before the Magistrate at the time he gives consent; or

(b) he is a person to whom subsection (7) applies.

(7) This subsection applies to a person if-

(a) he has been informed of his right to apply for legal aid and has had the opportunity to apply for legal aid, but he has refused or failed to apply;

(b) he has applied for legal aid but his application has been refused; or

(c) he was granted legal aid but the legal aid was withdrawn.

(8) In subsection (7) "legal aid" means representation for the purposes of criminal proceedings provided under the arrangements made for the purposes of Part I of the Legal Aid and Assistance Act.

(9) For the purposes of subsection (6) a person is to be treated as legally represented before the Magistrate if (and only if) he has the assistance of counsel or a solicitor to represent him in the proceedings before the Magistrate.

#### **Consent to extradition before case sent to Central Authority.**

64.(1) This section applies if a person gives his consent under section 63 to the Magistrate.

(2) If the Magistrate has not fixed a date under section 11 or 12 on which the extradition hearing is to begin he is not required to do so.

(3) If the extradition hearing has begun the Magistrate is no longer required to proceed or continue proceedings under sections 16 to 27.

(4) The Magistrate must send the case to the Central Authority for his decision whether the person is to be extradited.

(5) The person must be taken to have waived any right he would have (apart from the consent) not to be dealt with in the Requesting State for an offence committed before his extradition.

### *Post -extradition matters*

#### **Consent to other offence being dealt with.**

65.(1) This section applies if-

- (a) a person is extradited to a Requesting State in accordance with this Part; and
- (b) the Central Authority receives a valid request for his consent to the person being dealt with in the Requesting State for an offence other than the offence in respect of which he was extradited.

(2) A request for consent is valid if it is made by an authority which is an authority of the Requesting State and which the Central Authority believes has the function of making requests for the consent referred to in subsection (1)(b) in that State.

(3) The Central Authority must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.

(4) The Central Authority must decide whether the offence is an extradition offence.

(5) If the Central Authority decides the question in subsection (4) in the negative he must refuse his consent.

(6) If the Central Authority decides that question in the affirmative he must decide whether the Magistrate would send the case to him (for his decision whether the person was to be extradited) under sections 17 to 27 if-

- (a) the person were in Gibraltar; and
- (b) the Magistrate was required to proceed under section 17 in respect of the offence for which the Central Authority's consent is required.

(7) If the Central Authority decides the question in subsection (6) in the negative he must refuse his consent.

(8) If the Central Authority decides that question in the affirmative he must decide whether, if the person were in Gibraltar, his extradition in respect of the offence would be prohibited under section 30, 31 or 32.

(9) If the Central Authority decides the question in subsection (8) in the affirmative he must refuse his consent.

(10) If the Central Authority decides that question in the negative he may give his consent.

**Consent to further extradition to a Requesting State.**

66.(1) This section applies if-

- (a) a person is extradited to a State (the Requesting State) in accordance with this Part; and
- (b) the Central Authority receives a valid request for his consent to the person's extradition to another Requesting State for an offence other than the offence in respect of which he was extradited.

(2) A request for consent is valid if it is made by an authority which is an authority of the Requesting State and which the Central Authority believes has the function of making requests for the consent referred to in subsection (1)(b) in that Requesting State.

(3) The Central Authority must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.

(4) The Central Authority must decide whether the offence is an extradition offence in relation to the Requesting State referred to in subsection (1)(b).

(5) If the Central Authority decides the question in subsection (4) in the negative he must refuse his consent.

(6) If the Central Authority decides that question in the affirmative he must decide whether the Magistrate would send the case to him (for his decision whether the person was to be extradited) under sections 17 to 27 if-

- (a) the person were in Gibraltar; and

- (b) the Magistrate were required to proceed under section 17 in respect of the offence for which the Central Authority's consent is requested.

(7) If the Central Authority decides the question in subsection (6) in the negative he must refuse his consent.

(8) If the Central Authority decides that question in the affirmative he must decide whether, if the person were in Gibraltar, his extradition in respect of the offence would be prohibited under section 30, 31 or 32.

(9) If the Central Authority decides the question in subsection (8) in the affirmative he must refuse his consent.

(10) If the Central Authority decides that question in the negative he may give his consent.

## **Consent to further extradition to a Member State under a European arrest warrant.**

67.(1) This section applies if-

- (a) a person is extradited to a State (the Requesting State) in accordance with this Part; and
- (b) the Central Authority receives a valid request for his consent to the person's extradition under a European arrest warrant for an offence other than the offence in respect of which he was extradited.

(2) A request for consent is valid if it is made by an authority which is an authority of the requesting Member State and which the Central Authority believe has the function of making requests for the consent referred to in subsection (1)(b) in that Requesting State.

(3) The Central Authority must serve notice on the person that he has received the request for consent, unless he satisfied that it would not be practicable to do so.

(4) The Central Authority must decide whether the offence is an extradition offence under the European Arrest Warrant Act 2004.

(5) If the Central Authority decides the question in subsection (4) in the negative he must refuse his consent.

(6) If the Central Authority decides that question in the affirmative he must decide whether the Magistrate would order the person's extradition under the European Arrest Warrant Act 2004 if the person were in Gibraltar.

(7) If the Central Authority decides the question in subsection (6) in the affirmative he must give his consent.

(8) If the Central Authority decides that question in the negative he must refuse his consent.

**Return of the person to serve remainder of sentence.**

68.(1) This section applies if-

- (a) a person who is serving a sentence of imprisonment or another form of detention in Gibraltar is extradited to a Requesting State in accordance with this Part; and
- (b) the person is returned to Gibraltar to serve the remainder of his sentence.

(2) The person is liable to be detained in pursuance of his sentence.

(3) If he is at large he must be treated as being unlawfully at large.

(4) Time during which the person was not in Gibraltar as a result of his extradition does not count as time served by him as part of his sentence.

(5) But subsection (4) does not apply if-

- (a) the person was extradited for the purpose of being prosecuted for an offence; and
- (b) the person has not been convicted of the offence or of any other offence in respect of which the person was permitted to be dealt with in the Requesting State.

(6) In a case falling within subsection (5), time during which the person was not in Gibraltar as a result of his extradition counts as time served by him as part of his sentence if (and only if) it was spent in custody in connection with the offence or any other offence in respect of which he was permitted to be dealt with in the Requesting State.

**Costs where extradition ordered.**

69.(1) This section applies if any of the following occurs in relation to a person whose extradition is requested under this Part-

- (a) an order for the person's extradition is made under this Part;
- (b) the Supreme Court dismisses an appeal under section 39 or 44;

- (c) the Supreme Court or the Privy Council dismisses an application for leave to appeal to the Privy Council under section 50, if the application is made by the person;
- (d) the Privy Council dismisses an appeal under section 50, if the appeal is brought by the person.

(2) In a case falling within subsection (1)(a), the Magistrate may make such order as he considers just and reasonable with regard to the costs to be paid by the person.

(3) In a case falling within subsection (1)(b) by virtue of section 40(7), the Magistrate who decides the question that is (or all the questions that are) the subject of a direction under section 40(1)(b) may make such order as he considers just and reasonable with regard to the costs to be paid by the person.

(5) In a case falling within subsection (1)(c) or (d), the court by which the application or appeal is dismissed may make such order as it considers just and reasonable with regard to the costs to be paid by the person.

(6) An order for costs under this section-

- (a) must specify their amount; and
- (b) may name the person to whom they are to be paid.

**Costs where discharge ordered.**

70.(1) This section applies if any of the following occurs in relation to a person whose extradition to a Requesting State is requested under this Part-

- (a) an order for the person's discharge is made under this Part;
- (b) the person is taken to be discharged under this Part;
- (c) the Supreme Court dismisses an appeal under section 41 or 46;
- (d) the Supreme Court or the Privy Council dismisses an application for leave to appeal to the Privy Council under section 50, if the application is made on behalf of the Requesting State;
- (e) the Privy Council dismisses an appeal under section 50, if the appeal is brought on behalf of the Requesting State.

(2) In a case falling within subsection (1)(a), an order under subsection (5) in favour of the person may be made by-

- (a) the Magistrate, if the order for the person's discharge is made by him or by the Central Authority;
- (b) the Supreme Court, if the order for the person's discharge is made by it;
- (c) the Privy Council, if the order for the person's discharge is made by it.

(3) In a case falling within subsection (1)(b), the Magistrate may make an order under subsection (5) in favour of the person.

(4) In a case falling within subsection (1)(c), (d) or (e), the court by which the application or appeal is dismissed may make an order under subsection (5) in favour of the person.

(5) An order under this subsection in favour of a person is an order for a payment of the appropriate amount to be made to the person out of the Consolidated Fund.

(6) The appropriate amount is such amount as the Magistrate or court making the order under subsection (5) considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by him in the proceedings under this Part.

(7) But if the Magistrate or court making an order under subsection (5) is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in subsection (6), the Magistrate or court must-

- (a) assess what amount would in his or its opinion be just and reasonable; and
- (b) specify that amount in the order as the appropriate amount.

(8) Unless subsection (7) applies, the appropriate amount-

- (a) must be specified in the order, if the court considers it appropriate for it to be so specified and the person in whose favour the order is made agrees the amount;
- (b) must be determined in accordance with regulations made by the Chief Minister for the purposes of this section, in any other case.

(9) The Chief Minister may make regulations for carrying this Part into effect and the regulations may, in particular, make provision as to-

- (a) the scales and rates of payments of any costs payable out of the Consolidated Fund in pursuance of any costs order, the circumstances in which and conditions under which such costs may be allowed and paid and the expenses which may be included in such costs; and
- (b) the review, as respects costs payable out of the Consolidated Fund in pursuance of any costs order, of any decision on taxation, or determination of the amount, if the costs,

and any provision made under this Part enabling any sum to be paid out of the Consolidated Fund shall have effect subject to any such regulations.

(10) The Chief Minister may, by regulations, make provision for the recovery of sums paid out of the Consolidated Fund in cases where-

- (a) a costs order has been made against a person; and
- (b) the person in whose favour the order was made is legally assisted, or is a person in whose favour a costs order is made.

*Repatriation cases*

**Person serving sentences outside the State where convicted.**

71.(1) This section applies if-

- (a) a request is made for a person's extradition to a Requesting State and the request contains the statement referred to in subsection (2); or
- (b) a provisional warrant for the person's arrest is sought on behalf of a Requesting State and the information laid before the justice contains the statement referred to in subsection (2).

(2) The statement is one that the person-

- (a) is alleged to be unlawfully at large from a prison in one State (the imprisoning State) in which he was serving a sentence after conviction of an offence specified in the request by a court in another State (the convicting State) ; and
- (b) was serving the sentence in pursuance of international arrangements for prisoners sentenced to one State to be repatriated to another State in order to serve their sentence.

(3) If the Requesting State is either the imprisoning State or the convicting State-

- (a) section 5(3) has effect as if the reference to the statement referred to in subsection (4) of that section were a reference to the statement referred to in subsection (2) of this section; and
  - (b) section 9(1) has effect as if the reference to a person within subsection (2) of that section were a reference to the person referred to in subsection (1)(b) of this section.
- (4) If the Requesting State is the imprisoning State-
- (a) sections 7(2)(a), 9(3)(a) and 14(4)(b) have effect as if “an extradition offence” read “an extradition offence in relation to the convicting State”;
  - (b) sections 10(8)(a) and 63(2) have effect as if “the Requesting State in which he is accused of the commission of an offence or is alleged to have been convicted of an offence” read “the imprisoning State”;
  - (c) section 14(2)(e) has effect as if “the Requesting State” read “the convicting State”;
  - (d) section 23(5) has effect as if after “entitled” there were inserted “in the convicting State”;
  - (e) section 55(4) has effect as if “the Requesting State” read “the convicting State”;
  - (f) section 73(1) has effect as if “a Requesting State” read “the convicting State”; and
  - (g) in section 73, subsections (2) (3) (4), (5) and (7) have effect as if “the Requesting State” read “the convicting State”.

*Extradition offences*

**Extradition offences: person not sentenced for offence.**

72.(1) This section applies in relation to conduct of a person if-

- (a) he is accused in a Requesting State of the commission of an offence constituted by the conduct; or
- (b) he is alleged to be unlawfully at large after conviction by a court in a Requesting State of an offence constituted by the conduct and he has not been sentenced for the offence.

(2) The conduct constitutes an extradition offence in relation to the Requesting State if these conditions are satisfied-

- (a) the conduct occurs in the Requesting State;
- (b) the conduct would constitute an offence under the law of Gibraltar punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred Gibraltar;
- (c) the conduct is so punishable under the law of the Requesting State (however it is described in that law).

(3) The conduct also constitutes an extradition offence in relation to the Requesting State if these conditions are satisfied-

- (a) the conduct occurs outside the Requesting State;
- (b) the conduct is punishable under the law of the Requesting State with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law);
- (c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of Gibraltar punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.

(4) The conduct also constitutes an extradition offence in relation to the Requesting State if these conditions are satisfied-

- (a) the conduct occurs outside the Requesting State and no part of it occurs in Gibraltar;
- (b) the conduct would constitute an offence in Gibraltar punishable with imprisonment or another form of detention for a term of 12 months or greater punishment if it occurred in Gibraltar;
- (c) the conduct is so punishable under the law of the Requesting State (however it is described in that law).

(5) The conduct also constitutes an extradition offence in relation to the Requesting State if these conditions are satisfied-

- (a) the conduct occurs outside the Requesting State and no part of it occurs in Gibraltar;

- (b) the conduct is punishable under the law of the Requesting State with imprisonment for a term of 12 months or another form of detention or a greater punishment (however it is described in that law);
- (c) the conduct constitutes or if committed in Gibraltar would constitute an offence mention in subsection (6).

(6) The offences are-

- (a) an offence under section 59 of the International Criminal Court Act 2007 (genocide, crimes against humanity and war crimes);
- (b) an offence under section 60 of that Act (conduct ancillary to genocide etc committed outside the jurisdiction);
- (c) an ancillary offence, as defined in section 63 of that Act in relation to an offence falling within paragraph (a) or (b).

(7) If the conduct constitutes an offence under the military law of the Requesting State but does not constitute an offence under the criminal law of Gibraltar it does not constitute an extradition offence; and subsections (1) to (6) have effect subject to this.

**Extradition offences: person sentenced for offence.**

73.(1) This section applies in relation to conduct of a person if-

- (a) he is alleged to be unlawfully at large after conviction by a court in a Requesting State of an offence constituted by the conduct; and
- (b) he has been sentenced for the offence.

(2) The conduct constitutes an extradition offence in relation to the Requesting State if these conditions are satisfied-

- (a) the conduct occurs in the Requesting State;
- (b) the conduct would constitute an offence under Gibraltar law punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment;
- (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the Requesting State in respect of the conduct.

(3) The conduct also constitutes an extradition offence in relation to the Requesting State if these conditions are satisfied-

- (a) the conduct occurs outside the Requesting State;
- (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the Requesting State in respect of the conduct;
- (c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of Gibraltar punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.

(4) The conduct also constitutes an extradition offence in relation to the Requesting State if these conditions are satisfied-

- (a) the conduct occurs outside the Requesting State and no part of it occurs in Gibraltar;
- (b) the conduct would constitute an offence under the law of Gibraltar punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in Gibraltar;
- (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the Requesting State in respect of the conduct.

(5) The conduct also constitutes an extradition offence in relation to the Requesting State if these conditions are satisfied-

- (a) the conduct occurs outside the Requesting State and no part of it occurs in Gibraltar;
- (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the Requesting State in respect of the conduct;
- (c) the conduct constitutes or if committed in Gibraltar would constitute an offence mentioned in subsection (6).

(6) The offences are-

- (a) an offence under section 59 of the International Criminal Court Act 2007 (genocide, crimes against humanity and war crimes);

- (b) an offence under section 60 of that Act (conduct ancillary to genocide etc committed outside the jurisdiction);
- (c) an ancillary offence, as defined in section 63 of that Act in relation to an offence falling within paragraph (a) or (b).

(7) If the conduct constitutes an offence under the military law of the Requesting State but does not constitute an offence under the general criminal law of Gibraltar it does not constitute an extradition offence; and subsections (1) to (6) have effect subject to this.

#### **The extradition hearing.**

74.(1) The extradition hearing is the hearing at which the Magistrate or judge is to deal with a request for extradition to a Requesting State.

- (2) This section applies for the purposes of this Part.

### **Part 3 Extradition to Gibraltar**

#### *Extradition from a State*

#### **Dealing with persons extradited to Gibraltar from a State.**

75.(1) This section applies if a person is extradited to Gibraltar from a State (not being a Commonwealth country or a British Overseas Territory or a Member State of the European Union) under the law of that State.

(2) The person may be dealt with in Gibraltar for an offence committed before his extradition only if-

- (a) the offence is one falling within subsection (3); or
- (b) the condition in subsection (4) is satisfied.

(3) The offences are-

- (a) the offence in respect of which the person is extradited;
- (b) an offence disclosed by the information provided to the State in respect of that offence;
- (c) an offence in respect of which consent to the person being dealt with is given on behalf of the State.

(4) The condition is that-

- (a) the person has returned to the State from which he was extradited; or
  - (b) the person has been given an opportunity to leave Gibraltar.
- (5) A person is dealt with in Gibraltar for an offence if-
- (a) he is tried there for it; or
  - (b) he is detained with a view to trial there for it.

## *General*

### **Remission of punishment for other offences.**

76.(1) This section applies if-

- (a) a person is extradited to Gibraltar from a State;
- (b) before his extradition he has been convicted of an offence in Gibraltar;
- (c) he has not been extradited in respect of that offence.

(2) The punishment for the offence must be treated as remitted but the person's conviction for the offence must be treated as a conviction for all other purposes.

### **Return of person acquitted or not tried.**

77.(1) This section applies if-

- (a) a person is accused in Gibraltar of the commission of an offence;
- (b) the person is extradited to Gibraltar from a State under the law of the State corresponding to Part 2 of this Act;
- (c) the condition in subsection (2) or the condition in subsection (3) is satisfied.

(2) The condition is that-

- (a) proceedings against the person for the offence are not begun before the end of the required period, which is 6 months starting with the day on which the person arrives in Gibraltar on his extradition; and

- (b) before the end of the period of 3 months starting immediately after the end of the required period the person asks the Central Authority to return him to the State from which he was extradited.

(3) The condition is that-

- (a) at his trial for the offence the person is acquitted or is discharged under section 517 (1) of the Criminal Procedure and Evidence Act 2011; and
- (b) before the end of the period of 3 months starting immediately after the date of his acquittal or discharge the person asks the Central Authority to return him to the State from which he was extradited.

(4) The Central Authority must arrange for him to be sent back, free of charge and with as little delay as possible, to the State from which he was extradited to Gibraltar in respect of the offence.

**Restriction on bail where undertaking given by Central Authority.**

78.(1) This section applies in relation to a person if-

- (a) the Central Authority has given an undertaking in connection with the person's extradition to Gibraltar; and
- (b) the undertaking includes terms that the person be kept in custody until the conclusion of any proceedings against him in Gibraltar for an offence.

(2) A court, judge, Magistrate or justice of the peace may grant bail to the person in the proceedings only if the court, judge, Magistrate or justice of the peace considers that there are exceptional circumstances which justify it.

*Extradition to Gibraltar from Member States of the European Union*

**Issue of a Part 3 warrant.**

79.(1) The Magistrate may issue a Part 3 warrant in respect of a person if-

- (a) a police officer or an appropriate person applies to the magistrates' court for a Part 3 warrant; and
- (b) the condition in subsection (2) is satisfied.

(2) The condition is that a domestic warrant has been issued in respect of the person and there are reasonable grounds for believing -

- (a) that the person has committed an extradition offence; or
- (b) that the person is unlawfully at large after conviction of an extradition offence by a court in Gibraltar.

(3) A Part 3 warrant is an arrest warrant which contains-

- (a) the statement referred to in subsection (4) or the statement referred to in subsection (5); and
- (b) the certificate referred to in subsection (6).

(4) The statement is one that-

- (a) the person in respect of whom the warrant is issued is accused in Gibraltar of the commission of an extradition offence specified in the warrant; and
- (b) the warrant is issued with a view to his arrest and extradition to Gibraltar for the purpose of being prosecuted for the offence.

(5) The statement is one that-

- (a) the person in respect of whom the warrant is issued is alleged to be unlawfully at large after conviction of an extradition offence specified in the warrant by a court in Gibraltar; and
- (b) the warrant is issued with a view to his arrest and extradition to Gibraltar for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(6) The certificate is one certifying-

- (a) whether the conduct constituting the extradition offence specified in the warrant falls within the list in Schedule 1;
- (b) whether the offence is an extra-territorial offence;
- (c) what is the maximum punishment that may be imposed on conviction of the offence or (if the person has been sentenced for the offence) what sentence has been imposed.

(7) The conduct which falls within the list in Schedule 1 must be taken for the purposes of subsection (6)(a) to include conduct which constitutes-

- (a) an attempt, conspiracy or incitement to carry out conduct falling within the list; or
- (b) aiding, abetting, counselling or procuring the carrying out of conduct falling within the list.

(8) A domestic warrant is a warrant for the arrest or apprehension of a person which is issued under any of these sections-

- (a) section 23 of the Magistrates' Court Act; or
- (b) any other enactment in force in Gibraltar.

(9) An appropriate person is a person of a description specified in an order made by the Central Authority for the purposes of this section.

**Undertaking in relation to person serving sentence.**

80. This section applies if-

- (a) a Part 3 warrant is issued in respect of a person;
- (b) the person is serving a sentence of imprisonment or another form of detention in a Member State;
- (c) the person's extradition to Gibraltar from a Member State in pursuance of the warrant is made subject to a condition that an undertaking is given on behalf of Gibraltar with regard to his treatment in Gibraltar or his return to the Member State (or both).

(2) The Central Authority may give an undertaking to a person acting on behalf of the Member State with regard to either or both of these things-

- (a) the treatment in Gibraltar of the person in respect of whom the warrant is issued;
- (b) the return of that person to the Member State.

(3) The terms which may be included by the Central Authority in an undertaking given under subsection (2) in relation to a person accused in Gibraltar of the commission of an offence include terms-

- (a) that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in Gibraltar;

- (b) that the person be returned to the Member State to serve the remainder of his sentence on the conclusion of those proceedings.

(4) The terms which may be included by the Central Authority in an undertaking given under subsection (2) in relation to a person alleged to be unlawfully at large after conviction of an offence by a court in Gibraltar include terms that the person be returned to the Member State to serve the remainder of his sentence after serving any sentence imposed on him in Gibraltar.

### **Return to extraditing Member State to serve sentence.**

81.(1) This section applies if-

- (a) a Part 3 warrant is issued in respect of a person;
- (b) the warrant states that it is issued with a view to his extradition to Gibraltar for the purpose of being prosecuted for an offence;
- (c) he is extradited to Gibraltar from a Member State in pursuance of the warrant;
- (d) he is extradited on the condition that, if he is convicted of the offence and a sentence of imprisonment or another form of detention is imposed in respect of it, he must be returned to the Member State to serve the sentence;
- (e) he is convicted of the offence and a sentence of imprisonment or another form of detention is imposed in respect of it.

(2) The person must be returned to the Member State to serve the sentence as soon as is reasonably practicable after the sentence is imposed.

(3) If subsection (2) is complied with, the punishment for the offence must be treated as remitted but the person's conviction for the offence must be treated as a conviction for all other purposes.

(4) If subsection (2) is not complied with and the person applies to the Magistrate to be discharged the Magistrate must order his discharge, unless reasonable cause is shown for the delay.

### **Service of sentence in the Member State executing Part 3 warrant.**

82.(1) This section applies if-

- (a) a Part 3 warrant is issued in respect of a person;

- (b) the certificate contained in the warrant certifies that a sentence has been imposed;
- (c) an undertaking is given on behalf of the Member State that the person will be required to serve the sentence in the Member State;
- (d) on the basis of the undertaking the person is not extradited to Gibraltar from the Member State.

(2) The punishment for the offence must be treated as remitted but the person's conviction for the offence must be treated as a conviction for all other purposes.

**Dealing with person for other offences.**

83.(1) This section applies if a person is extradited to Gibraltar from a Member State in pursuance of a Part 3 warrant.

(2) The person may be dealt with in Gibraltar for an offence committed before his extradition only if-

- (a) the offence is one falling within subsection (3); or
- (b) the condition in subsection (4) is satisfied.

(3) The offences are-

- (a) the offence in respect of which the person is extradited;
- (b) an offence disclosed by the information provided to the Member State in respect of that offence;
- (c) an extradition offence in respect of which consent to the person being dealt with is given on behalf of the Member State;
- (d) an offence which is not punishable with imprisonment or another form of detention;
- (e) an offence in respect of which the person will not be detained in connection with his trial, sentence or appeal;
- (f) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.

(4) The condition is that the person has been given an opportunity to leave Gibraltar and-

- (a) he has not done so before the end of the permitted period; or

- (b) he has done so before the end of the permitted period and has returned to Gibraltar.

(5) The permitted period is 45 days starting with the day on which the person arrives in Gibraltar.

## **Effect of consent to extradition to Gibraltar.**

84.(1) This section applies if-

- (a) a person is extradited to Gibraltar from a Member State in pursuance of a Part 3 warrant;
- (b) the person consented to his extradition to Gibraltar in accordance with the law of the Member State.

(2) Section 83(2) does not apply if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that-

- (a) under the law of the Member State, the effect of the person's consent is to waive his right under section 83(2);
- (b) the person has not revoked his consent in accordance with that law, if he is permitted to do so under that law.

(4) The conditions are that-

- (a) under the law of the Member State, the effect of the person's consent is not to waive his right under section 83(2);
- (b) the person has expressly waived his right under section 83(2) in accordance with that law;
- (c) the person has not revoked his consent in accordance with that law, if he is permitted to do so under that law;
- (d) the person has not revoked the waiver of his right under section 83(2) in accordance with that law, if he is permitted to do so under that law.

## **Extradition offences.**

85.(1) Conduct constitutes an extradition offence in relation to Gibraltar if these conditions are satisfied-

- (a) the conduct occurs in Gibraltar;
- (b) the conduct is punishable in Gibraltar with imprisonment or another form of detention for a term of 12 months or a greater punishment.

(2) Conduct also constitutes an extradition offence in relation to Gibraltar if these conditions are satisfied-

- (a) the conduct occurs outside Gibraltar;
- (b) the conduct constitutes an extra-territorial offence punishable in Gibraltar with imprisonment or another form of detention for a term of 12 months or a greater punishment.

(3) But subsections (1) and (2) do not apply in relation to conduct of a person if-

- (a) he is alleged to be unlawfully at large after conviction by a court in Gibraltar of the offence constituted by the conduct; and
- (b) he has been sentenced for the offence.

(4) Conduct also constitutes an extradition offence in relation to Gibraltar if these conditions are satisfied-

- (a) the conduct occurs in Gibraltar;
- (b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in Gibraltar in respect of the conduct.

(5) Conduct also constitutes an extradition offence in relation to Gibraltar if these conditions are satisfied-

- (a) the conduct occurs outside Gibraltar;
- (b) the conduct constitutes an extra-territorial offence;
- (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in Gibraltar in respect of that conduct.

(6) Subsections (1) to (5) apply for the purposes of sections 79 to 84.

#### **Part 4**

#### **Police powers**

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*Entry, search and seizure*

**Interpretation for Part 4.**

86.(1) Subsections (3) to (9) apply for the purposes of this Part.

(2) The “2011” Act is the Criminal Procedure and Evidence Act 2011.

(3) Each of these is an extradition arrest power-

(a) a warrant issued under section 7; and

(b) a provisional warrant.

(4) “Excluded material” has the meaning given by section 15 of the 2011 Act.

(5) “Items subject to legal privilege” has the meaning given by section 14 of the 2011 Act.

(6) “Premises” has the meaning given by section 2(1) of the 2011 Act.

(7) “Special procedure material” has the meaning given by section 18 of the 2011 Act.

(8) The expressions in subsection (9) have the meanings given by section 77 (1) of the 2011 Act.

(9) The expressions are-

(a) appropriate consent;

(b) fingerprints;

(c) intimate search;

(d) non-intimate sample.

*Warrants and orders*

**Search and seizure warrants.**

87.(1) A justice of the peace may, on an application made to him by a police officer, issue a search and seizure warrant if he is satisfied that the requirements for the issue of a search and seizure warrant are fulfilled.

(2) The application for a search and seizure warrant must state that-

- (a) the extradition of a person specified in the application is sought under Part 2;
- (b) the warrant is sought in relation to premises specified in the application;
- (c) the warrant is sought in relation to material, or material of a description, specified in the application;
- (d) the material, or material of that description, is believed to be on the premises.

(3) If the application states that the extradition of a person is sought under Part 2, the application must also state that the person is accused in a State specified in the application of the commission of an offence-

- (a) which is specified in the application; and
- (b) which is an extradition offence within the meaning given by section 72.

(4) A search and seizure warrant is a warrant authorising a police officer-

- (a) to enter and search the premises specified in the application for the warrant; and
- (b) to seize and retain any material found there which falls within subsection (5).

(5) Material falls within this subsection if-

- (a) it would be likely to be admissible evidence at a trial in Gibraltar for the offence specified in the application for the warrant; and
- (b) it does not consist of or include items subject to legal privilege, excluded material or special procedure material.

(6) The requirements for the issue of a search and seizure warrant are that there are reasonable grounds for believing that-

- (a) the offence specified in the application has been committed by the person so specified;
- (b) the person is in Gibraltar or is on his way to Gibraltar;
- (c) the offence is an extradition offence within the meaning given by section 72 (if subsection (4) applies);

- (d) there is material on premises specified in application which falls under subsection (5);
- (e) any of the conditions referred to in subsection (7) is satisfied.

(7) The conditions are-

- (a) that it is not practicable to communicate with a person entitled to grant entry to the premises;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with a person entitled to grant access to the material referred to in subsection 6(d);
- (c) that entry to the premises will not be granted unless a warrant is produced;
- (d) that the purpose of a search may be frustrated or seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.

## **Production orders.**

88.(1) A Magistrate may, on an application made to him by a police officer, make a production order if he is satisfied that the requirements for the making of a production order are fulfilled.

(2) The application for a production order must state that-

- (a) the extradition of a person specified in the application is sought under Part 2;
- (b) the order is sought in relation to premises specified in the application;
- (c) the order is sought in relation to material, or material of a description, specified in the application;
- (d) the material is special procedure material or excluded material;
- (e) a person specified in the application appears to be in possession or control of the material.

(3) If the application states that the extradition of the person is sought under Part 2, the application must also state that the person is accused in a State specified in the application of the commission of an offence-

- (a) which is specified in the application; and
  - (b) which is an extradition offence within the meaning given by section 72.
- (4) A production order is an order either-
- (a) requiring the person the application for the order specifies as appearing to be in possession or control of special procedure material or excluded material to produce to a police officer (within the period stated in the order) for him to take away; or
  - (b) requiring that person to give a police officer access to the special procedure material or excluded material within the period stated in the order.
- (5) The period stated in a production order must be a period of 7 days starting with the day on which the order is made, unless it appears to the Magistrate by whom the order is made that a longer period would be appropriate.
- (6) Production orders have effect as if they were orders of the court.

**Requirements for making of production order.**

89.(1) These are the requirements for the making of a production order.

- (2) There must be reasonable grounds for believing that-
- (a) the offence specified in the application has been committed by the person so specified;
  - (b) the person is in Gibraltar or is on his way to Gibraltar;
  - (c) the offence is an extradition offence within the meaning of section 72 (if section 88(3) applies);
  - (d) there is material which consists of or includes special procedure material or excluded material on premises specified in the application;
  - (e) the material would be likely to be admissible evidence at a trial in Gibraltar for the offence specified in the application (on the assumption that conduct constituting that offence would constitute an offence in Gibraltar).
- (3) It must appear that other methods of obtaining the material-

- (a) have been tried without success; or
- (b) have not been tried because they were bound to fail.

(4) It must be in the public interest that the material should be produced or that access to it should be given.

## **Computer information.**

90.(1) This section applies if any of the special procedure material or excluded material specified in an application for a production order consists of information stored in any electronic form.

(2) If the order is an order requiring a person to produce the material to a police officer for him to take away, it has effect as an order to produce the material in a form-

- (a) in which it can be taken away by him;
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(3) If the order is an order requiring a person to give a police officer access to the material, it has effect as an order to give him access to the material in a form-

- (a) in which it is visible and legible; or
- (b) from which it can readily be produced in a visible and legible form.

## **Warrants: special procedure material and excluded material.**

91.(1) A Magistrate may, on an application made to him by a police officer, issue a warrant under this section if he is satisfied that-

- (a) the requirements for the making of a production order are fulfilled; and
- (b) the further requirement for the issue of a warrant under this section is fulfilled.

(2) The application for a warrant under this section must state that-

- (a) the extradition of a person specified in the application is sought under Part 2;

- (b) the warrant is sought in relation to premises specified in the application;
- (c) the warrant is sought in relation to material, or material of a description, specified in the application;
- (d) the material is special procedure material or excluded material.

(3) If the application states that the extradition of the person is sought under Part 2, the application must also state that the person is accused in a State specified in the application of the commission of an offence-

- (a) which is specified in the application; and
- (b) which is an extradition offence within the meaning given by section 72.

(4) A warrant under this section authorises a police officer to enter and search the premises specified in the application for the warrant and-

- (a) to seize and retain any material found there which falls within subsection (5) and which is special procedure material, if the application for the warrant states that the warrant is sought in relation to special procedure material;
- (b) to seize and retain any material found there which falls within subsection (5) and which is excluded material, if the application for the warrant states that the warrant is sought in relation to excluded material.

(5) Material falls within this subsection if it would be likely to be admissible evidence at a trial in Gibraltar for the offence specified in the application for the warrant (on the assumption that conduct constituting that offence would constitute an offence in Gibraltar).

(6) The further requirement for the issue of a warrant under this section is that any of these conditions is satisfied-

- (a) it is not practicable to communicate with a person entitled to grant entry to the premises;
- (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with a person entitled to grant access to the material referred to in section 89(2)(d);
- (c) the material contains information which is subject to a restriction on disclosure or an obligation of secrecy contained in an

enactment (including one passed after this Act) and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued.

### *Search and seizure without warrant*

#### **Entry and search of premises for purposes of arrest.**

92.(1) This section applies if a police officer has power to arrest a person under an extradition arrest power.

(2) A police officer may enter and search any premises for the purpose of exercising the power of arrest if he has reasonable grounds for believing that the person is on the premises.

(3) The power to search conferred by subsection (2) is exercisable only to the extent that is reasonably required for the purpose of exercising the power of arrest.

(4) A police officer who has entered premises in exercise of the power conferred by subsection (2) may seize and retain anything which is on the premises if he has reasonable grounds for believing –

- (a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence; and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged altered or destroyed.

(5) An offence includes an offence committed outside Gibraltar.

(6) If the premises contain 2 or more separate dwellings, the power conferred by subsection (2) is a power to enter and search only-

- (a) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other dwelling comprised in the premises; and
- (b) any dwelling comprised in the premises in which the police officer has reasonable grounds for believing that the person may be.

#### **Entry and search of premises on arrest.**

93.(1) This section applies if a person has been arrested under an extradition arrest power at a place other than a police station.

(2) A police officer may enter and search any premises in which the person was at the time of his arrest or immediately before his arrest if he has reasonable grounds for believing-

- (a) if the person has not been convicted of the relevant offence, that there is on the premises evidence (other than items subject to legal privilege) relating to the relevant offence;
- (b) in any case, that there is on the premises evidence (other than items subject to legal privilege) relating to the identity of the person.

(3) The relevant offence is the offence-

- (a) in respect of which extradition is requested, if the arrest was under a warrant issued under section 7;
- (b) of which the person is accused, if the arrest was under a provisional warrant.

(4) The power to search conferred by subsection (2)-

- (a) if the person has not been convicted of the relevant offence, is a power to search for evidence (other than items subject to legal privilege) relating to the relevant offence;
- (b) in any case, is a power to search for evidence (other than items subject to legal privilege) relating to the identity of the person.

(5) The power to search conferred by subsection (2) is only exercisable only to the extent that it is reasonably required for the purpose of discovering evidence in respect of which the power is available by virtue of subsection (4).

(6) A police officer may seize and retain anything for which he may search by virtue of subsections (4) and (5).

(7) A police officer who has entered premises in exercise of the power conferred by subsection (2) may seize and retain anything which is on the premises if he has reasonable grounds for believing-

- (a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence; and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(8) An offence includes an offence committed outside Gibraltar.

(9) If the premises contain 2 or more separate dwellings, the power conferred by subsection (2) is a power to enter and search only-

- (a) any dwelling in which the arrest took place or in which the person was immediately before his arrest; and
- (b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwelling comprised in the premises.

**Search of person on arrest.**

94.(1) This section applies if a person has been arrested under an extradition arrest power at a place other than a police station.

(2) A police officer may search the person if he has reasonable grounds for believing that the person may present a danger to himself or others.

(3) A police officer may search the person if he has reasonable grounds for believing that the person may have concealed on him anything-

- (a) which he might use to assist him to escape from lawful custody;
- (b) which might be evidence relating to an offence or to the identity of the person.

(4) The power to search conferred by subsection (3)-

- (a) is a power to search for anything falling within subparagraph (a) or (b) of that subsection;
- (b) is exercisable only to the extent that is reasonably required for the purpose of discovering such a thing.

(5) The powers conferred by subsection (2) and (3)-

- (a) do not authorise a police officer to require a person to remove any of his clothing in public, other than an outer coat, jacket or gloves;
- (b) authorise a search of a person's mouth.

(6) A police officer searching a person in exercise of the power conferred by subsection (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.

(7) A police officer searching a person in exercise of the power conferred by subsection (3) may seize and retain anything he finds if he has reasonable grounds for believing-

- (a) that the person might use it to assist him to escape from lawful custody;
- (b) that it is evidence of an offence or of the identity of the person or has been obtained in consequence of the commission of an offence.

(8) An offence includes an offence committed outside Gibraltar.

**Entry and search of premises after arrest.**

95.(1) This section applies if a person has been arrested under an extradition arrest power.

(2) A police officer may enter and search any premises occupied or controlled by the person if the police officer has reasonable grounds for suspecting-

- (a) if the person has not been convicted of the relevant offence, that there is on the premises evidence (other than items subject to legal privilege) relating the offence;
- (b) in any case, that there is on the premises evidence (other than items subject to legal privilege) relating to the identity of the person.

(3) The relevant offence is the offence-

- (a) in respect of which extradition is requested, if the arrest was made under a warrant issued under section 7;
- (b) of which the person is accused, if the arrest was under a provisional warrant.

(4) The power to search conferred by subsection (2)-

- (a) if the person has not been convicted of the relevant offence, is a power to search for evidence (other than items subject to legal privilege) relating to the relevant offence;
- (b) in any case, it's a power to search for evidence (other than items subject to legal privilege) relating to the identity of the person.

(5) The power to search conferred by subsection (2) is exercisable only to the extent that it is reasonably required for the purpose of discovering evidence in respect of which the power is available by virtue of subsection (4).

(6) A police officer may seize and retain anything for which he may search by virtue of subsections (4) and (5).

(7) A police officer who has entered premises in exercise of the power conferred by subsection (2) may seize and retain anything which is on the premises if he has reasonable grounds for believing-

- (a) that it has been obtained in consequence of the commission of an offence or it is evidence in relation to an offence; and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(8) An offence includes an offence committed outside Gibraltar.

(9) The powers conferred by subsections (2) and (6) may be exercised only if a police officer of the rank of inspector or above has given written authorisation for their exercise.

(10) But the power conferred by subsection (2) may be exercised without authorisation under subsection (9) if-

- (a) it is exercised before the person arrested is taken to a police station; and
- (b) the presence of the person at a place other than a police station is necessary for the effective exercise of the power to search.

### *Treatment following arrest*

#### **Fingerprints and samples.**

96.(1) This section applies if a person has been arrested under an extradition arrest power and is detained at a police station.

(2) Fingerprints may be taken from the person only if they are taken by a police officer-

- (a) with the appropriate consent given in writing; or
- (b) without that consent, under subsection (4).

(3) A non-intimate sample may be taken from the person only if it is taken by a police officer-

- (a) with the appropriate consent given in writing; or
- (b) without that consent, under subsection (4).

(4) Fingerprints or a non-intimate sample may be taken from the person without the appropriate consent only if a police officer of at least the rank of inspector authorises the fingerprints or sample to be taken.

#### **Searches and examination.**

97.(1) This section applies if a person has been arrested under an extradition arrest power and is detained at a police station.

(2) If a police officer of at least the rank of inspector authorises it, the person may be searched or examined, or both, for the purpose of facilitating the ascertainment of his identity.

(3) An identifying mark found on a search or examination under this section may be photographed-

- (a) with the appropriate consent; or
- (b) without the appropriate consent, if that consent is withheld or it is not practicable to obtain it.

(4) The only persons entitled to carry out a search or examination, or take a photograph, under this section are-

- (a) police officers;
- (b) persons designated for the purposes of this section by the Commissioner of Police.

(5) A person may not under this section-

- (a) carry out a search or examination of a person of the opposite sex;
- (b) take a photograph of any part of the body (other than the face) of a person of the opposite sex.

(6) An intimate search may not be carried out under this section.

(7) Ascertaining a person's identity includes showing that he is not a particular person.

(8) Taking a photograph includes using a process by means of which a visual image may be produced; and photographing a person must be construed accordingly.

(9) Mark includes features and injuries and a mark is an identifying mark if its existence in a person's case facilitates the ascertainment of his identity.

## **Photographs.**

98.(1) This section applies if a person has been arrested under an extradition arrest power and is detained at a police station.

- (2) The person may be photographed-
  - (a) with the appropriate consent; or
  - (b) without the appropriate consent, if that consent is withheld or it is not practicable to obtain it.
- (3) A person proposing to take a photograph of a person under this section-
  - (a) may for the purpose of doing so require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed; and
  - (b) if the requirement is not complied with may remove the item or substance himself.
- (4) The only persons entitled to take a photograph under this section are-
  - (a) police officers;
  - (b) persons designated for the purposes of this section by the Commissioner of Police.

(5) Taking a photograph includes using a process by means of which a visual image may be produced; and photographing a person must be construed accordingly.

## **Other treatment and rights.**

- 99.(1) This section applies in relation to cases where a person-
- (a) is arrested under an extradition arrest power at a police station;
  - (b) is taken to a police station after being arrested elsewhere under an extradition arrest power;

- (c) is detained at a police station after being arrested under an extradition arrest power.

(2) In relation to those cases the Central Authority may by order apply the provisions under subsection (3) with specified modifications.

(3) The provisions are these provisions in the Criminal Procedure and Evidence Act 2011-

- (a) section 79 (searches of detained persons);
- (b) section 81 (intimate searches);
- (c) section 83 (right to have someone informed when arrested);
- (d) **section 85 (access to legal advice).**

*Delivery of seized property*

**Delivery of seized property.**

100.(1) This section applies to-

- (a) anything which has been seized or produced under this Part; or
- (b) anything which has being seized under section 29 or 30 of the Criminal Procedure and Evidence Act 2011 in reliance on a power of seizure conferred by this Part.

(2) A police officer may deliver any such thing to a person who is or is acting on behalf of an authority if the police officer has reasonable grounds for believing that the authority-

- (a) is an authority of the relevant State; and
- (b) has functions such that it is appropriate for the thing to be delivered to it.

(3) If the relevant seizure power was a warrant issued under this Part, or the thing was produced under an order made under this Part, the relevant State is the State specified in the application for the warrant or order.

(4) If the relevant seizure power was section 92(4), 93(6) or (7), 94(6) or (7) or 95(6) or (7), the relevant State is-

- (a) the State to which a person's extradition is requested, in a case where the applicable extradition arrest power is a warrant issued under section 7;

- (b) the State in which a person is accused of the commission of an offence or has been convicted of an offence, in a case where the applicable extradition arrest power is a provisional warrant.

(5) The applicable extradition arrest power is-

- (a) the extradition arrest power under which a police officer had a power of arrest, if the relevant seizure power was section 92(4);
- (b) the extradition arrest power under which a person was arrested, if the relevant seizure power was section 93(6) or (7), 94(6) or (7) or 95(6) or (7).

(6) The relevant seizure power is-

- (a) the power under which the thing was seized; or
- (b) the power in reliance on which the thing was seized under section 29 or 30 of the Criminal Procedure and Evidence Act 2011.

### *Codes of practice*

#### **Codes of practice.**

101.(1) The Commissioner of Police must issue codes of practice in connection with-

- (a) the exercise of the powers conferred by this Part;
- (b) the retention, use and return of anything seized or produced under this Part;
- (c) access to and the taking of photographs and copies of anything so seized and produced;
- (d) the retention, use, disclosure and destruction of fingerprints, a sample or a photograph taken under this Part.

(2) If the Commissioner of Police proposes to issue a code of practice under this section the Minister must-

- (a) publish a draft of the code;
- (b) consider any representations made to him about the draft;

- (c) if he thinks it appropriate, modify the draft in the light of any such representations.
- (3) The Minister must lay the code before Parliament.
- (4) When he has done so he may bring the code into operation by order.
- (5) The Minister may revise the whole or any part of a code issued under this section and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.
- (6) A failure by a police officer to comply with a provision of a code issued under this section does not of itself make him liable to criminal or civil proceedings.
- (7) A code issued under this section is admissible in evidence in proceedings under this Act and must be taken into account by a judge or court in determining any question to which it appears to the judge or the court to be relevant.
- (8) If the Minister publishes a draft code of practice in connection with a matter specified in subsection (1) before the date on which this section comes into force-
- (a) the draft is as effective as one published under subsection (2) on or after that date;
  - (b) representations made to the Minister about the draft before that date are as effective as representations made to him about it after that date;
  - (c) modifications made by the Minister to the draft in the light of any such representations before that date are as effective as any such modifications made by him on or after that date.

**Customs officers.**

102. The Government may by order provide for any provision of this Part which applies in relation to police officers or persons arrested by police officers to apply with specified modifications in relation to customs officers or persons arrested by customs officers.

**Part 5  
Miscellaneous***Competing extradition claims***Competing claims to extradition.**

103.(1) This section applies if at the same time-

- (a) there is a European arrest warrant in respect of a person and the person has not been extradited in pursuance of the warrant or discharged; and
- (b) there is a request for the same person's extradition, a certificate has been issued under section 5 in respect of the request, and the person has not been extradited in pursuance of the request or discharged.

(2) The Central Authority may-

- (a) order proceedings (or further proceedings) on one of them (the warrant or the request) to be deferred until the other one has been disposed of, if neither the warrant nor the request has been disposed of;
- (b) order the person's extradition in pursuance of the warrant to be deferred until the request has been disposed of, if an order for his extradition in pursuance of the warrant has been made;
- (c) order the person's extradition in pursuance of the request to be deferred until the warrant has been disposed of, if an order for his extradition in pursuance of the request has been made.

(3) In applying subsection (2), the Central Authority must take account in particular of these matters-

- (a) the relative seriousness of the offences concerned;
- (b) the place where each offence was committed (or was alleged to have been committed);
- (c) the date when the warrant was issued and the date when the request was received;
- (d) whether, in the case of each offence, the person is accused of its commission (but not alleged to have been convicted) or is alleged to be unlawfully at large after conviction.

### **Proceedings on deferred warrant or request.**

104.(1) This section applies if-

- (a) an order is made under this Act deferring a person's extradition in pursuance of an extradition claim (the deferred claim) until

another extradition claim in respect of him has been disposed of;  
and

(b) the other extradition claim has been disposed of.

(2) The Magistrate may make an order for proceedings on the deferred claim to be resumed.

(3) No order under subsection (2) may be made after the end of the required period.

(4) If the person applies to the Magistrate to be discharged, the Magistrate may order his discharge.

(5) If the person applies to the Magistrate to be discharged, the Magistrate must order his discharge if-

(a) the required period has ended; and

(b) the Magistrate has not made an order under subsection (2) or ordered the person's discharge.

(6) The required period is 21 days starting with the day on which the other extradition claim is disposed of.

#### **Proceedings where extradition deferred.**

105.(1) This section applies if-

(a) an order is made under this Act deferring a person's extradition in pursuance of an extradition claim (the deferred claim) until another extradition claim in respect of him has been disposed of;

(b) the other extradition claim is disposed of.

(2) The Magistrate may make an order for the person's extradition in pursuance of the deferred claim to cease to be deferred.

(3) No order under subsection (2) may be made after the end of the required period.

(4) If the person applies to the Magistrate to be discharged, the Magistrate may order his discharge.

(5) If the person applies to the Magistrate to be discharged, the Magistrate must order his discharge if-

(a) the required period has ended; and

- (b) the Magistrate has not made an order under subsection (2) or ordered the person's discharge.

(6) The required period is 21 days starting with the day on which the other extradition claim is disposed of.

### *Re-extradition*

#### **Re-extradition: preliminary.**

106.(1) Section 107 applies in relation to a person if the conditions in subsections (2) to (6) are satisfied.

(2) The first condition is that the person extradited to a State in accordance with Part 2.

(3) The second condition is that the person was serving a sentence of imprisonment or another form of detention in Gibraltar (Gibraltar sentence) before he was extradited.

(4) The third condition is that if the person was extradited in accordance with Part 2, the request in pursuance of which the person was extradited contained a statement that the person was accused of the commission of an offence.

(5) The fourth condition is that a certificate issued by a judicial authority of the State shows that-

- (a) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment (the overseas sentence) was imposed on the person in the State;
- (b) the overseas sentence was imposed on him in respect of-
  - (i) the offence specified in the warrant or request; or
  - (ii) any other offence committed before his extradition in respect of which he was permitted to be dealt with in the State.

(6) The fifth condition is that before serving the overseas sentence the person was returned to Gibraltar to serve the remainder of the Gibraltar sentence.

#### **Re-extradition hearing.**

107.(1) If this section applies, a person must be brought as soon as practicable after the relevant time before the magistrates' court for the Magistrate to decide whether the person is to be extradited again to the Requesting State in which the overseas sentence was imposed.

(2) The relevant time is the time at which the person would otherwise be released from detention pursuant to the Gibraltar sentence (whether or not on licence).

(3) If subsection (1) is not complied with and the person applies to the Magistrate to be discharged, the Magistrate must order his discharge.

(4) The person must be treated as continuing in legal custody until he is brought before the magistrates' court under subsection (1) or he is discharged under subsection (3).

(5) If the person is brought before the Magistrate under subsection (1) the Magistrate must decide whether the State in which the overseas sentence was imposed is-

- (a) a State to which this Act applies;
- (b) is not a State to which this Act applies.

(6) If the Magistrate decides that the State is a State to which this Act applies, section 108 applies.

(7) If the Magistrate decides that that the State is not a State to which this Act applies, he must order the person's discharge.

(8) A person's discharge as a result of this section does not affect any conditions on which he is released from detention pursuant to the Gibraltar sentence.

#### **Re-extradition to a State.**

108.(1) If this section applies, this Act applies as it would if-

- (a) a valid request for the person's extradition to the Requesting State had been made;
- (b) the request contained a statement that the person was alleged to be unlawfully at large after conviction of the relevant offence;
- (c) the relevant offence were specified in the request;
- (d) the hearing at which the Magistrate is to make the decision referred to in section 107(1) were the extradition hearing; and

(e) the proceedings before the Magistrate were under Part 2.

(2) As applied by subsection (1), this Act has effect with the modifications set out in Schedule 2.

(3) The relevant offence is the offence in respect of which the overseas sentence is imposed.

### *International Conventions and Agreements*

#### **International Conventions and Agreements.**

109.(1) A State may be designated by order made by the Minister if it is a party to an international Convention, Treaty or bilateral agreement which apply to Gibraltar.

(2) A designation under subsection (1) shall be published in the Gazette.

(3) The Minister, may, by notice in the Gazette, amend, add to, delete from, revoke or replace any order made under subsection (1).

### *Special extradition arrangements*

#### **Special extradition arrangements.**

110.(1) This section applies if the Central Authority believes that-

- (a) arrangements have been made between Gibraltar and another Territory for the extradition of a person to the Territory; and
- (b) the Territory is not a Member State or a State.

(2) The Central Authority may certify that the conditions in paragraphs (a) and (b) of subsection (1) are satisfied in relation to the extradition of the person.

(3) If the Central Authority issues a certificate under subsection (2) this Act applies in respect of the person's extradition to the Territory as if the Territory were a State.

(4) A certificate under subsection (2) in relation to a person is conclusive evidence that the conditions in paragraphs (a) and (b) of subsection (1) are satisfied in relation to a person's extradition.

#### **Custody.**

111.(1) If the Magistrate remands a person in custody under this Act, the person must be committed to the institution to which he would have been committed if charged with an offence before the Magistrate.

(2) If a person in custody following his arrest under Part 2 escapes from custody, he may be retaken in Gibraltar in the same way as he could have been if he had been in custody following his arrest or apprehension under a warrant for his arrest.

(3) A relevant domestic warrant is a warrant for his arrest or apprehension issued in Gibraltar in question in respect of an offence committed there.

(4) Subsection (5) applies if a person is in custody in Gibraltar (whether under this Act or otherwise).

(5) The person must be treated as continuing in legal custody until he reaches the place to which he is required to be removed.

(6) An order for a person's extradition under this Act is sufficient authority for an appropriate person-

- (a) to receive him;
- (b) to keep him in custody until he is extradited under this Act;
- (c) to convey him to the Requesting State to which he is to be extradited under this Act.

(7) An appropriate person is-

- (a) a person to whom the order is directed;
- (b) a police officer.

#### *Evidence*

#### **Receivable documents.**

112.(1) A document issued in a Requesting State may be received in evidence in proceedings under this Act if it is duly authenticated.

(2) A document is duly authenticated if (and only if) one of these applies-

- (a) it purports to be signed by a judge, Magistrate or other judicial authority of the Requesting State;
- (b) it purports to be authenticated by oath or affirmation of a witness.

(3) Subsection (1) does not prevent a document that is not duly authenticated from being received in evidence in proceedings under this Act.

### **Documents sent by facsimile.**

113.(1) This section applies if a document to be sent in connection with proceedings under this Act is sent by facsimile transmission or by other electronic means.

(2) This Act has effect as if the document received by facsimile transmission or by other electronic means were the document used to make the transmission.

### **Written statements and admissions.**

114.(1) The provisions mentioned in subsection (2) apply in relation to proceedings under this Act as they apply in relation to proceedings for an offence.

(2) The provisions are-

- (a) section 355 of the Criminal Procedure and Evidence Act 2011 (proof by formal admission);
- (b) section 405 of the Criminal Procedure and Evidence 2011 (proof by written statement).

(3) As applied by subsection (1) in relation to proceedings under this Act, section 355 of the Criminal Procedure and Evidence Act 2011 have effect as if-

- (a) references to the defendant were to the person whose extradition is sought (or who has been extradited);
- (b) references to the prosecutor were to the Member State or State concerned;
- (c) references to the trial were to the proceedings under this Act for the purposes of which the admission is made; and
- (d) references to subsequent criminal proceedings were to subsequent proceedings under this Act.

### *Other miscellaneous provisions*

### **Service of notices.**

115. Service of a notice on a person under section 65, 66 and 67 may be effected in any of these ways-

- (a) by delivering the notice to the person;
- (b) by leaving it for him with another person at his last known or usual place of abode;
- (c) by sending it by post in a letter addressed to him at his last known or usual place of abode.

**Language of documents received.**

116. Any documents provided under this Act shall be in the language that is understood by the person receiving them.

**Burden and standard of proof.**

117.(1) This section applies if, in proceedings under this Act, a question arises as to the burden and standard of proof.

(2) The question must be decided by applying any enactment or rule of law that would apply if the proceedings were proceedings for an offence.

(3) Any enactment or rule of law applied under subsection (2) to proceedings under this Act must be applied as if-

- (a) the person whose extradition is sought (or has been extradited) were accused of an offence;
- (b) the Requesting State concerned were the prosecution.

(4) Subsections (2) and (3) are subject to any express provision of this Act.

**Extradition for more than one offence.**

118. The Central Authority may by order provide for this Act to have effect with specified modifications in relation to a case where a request for extradition is made in respect of more than one offence.

**Reasonable force.**

119. A person may use reasonable force, if necessary, in the exercise of a power conferred by this Act.

**Rules of court.**

120. The Chief Justice may-

- (a) make any rules of court supplementing, amending, replacing or modifying the Criminal Procedure Rules as they apply to Gibraltar; and
- (b) issue criminal practice directions,

and any such rules or directions apply in place of the Criminal Procedure Rules or practice directions of the Chief Justice of England and Wales respectively.

## **Regulations.**

121.(1) The Minister may make Regulations for the purpose of carrying this Act into effect.

(2) Regulations made under this section may amend, add to or substitute any matter provided for in the Act.

## **Form of documents.**

122. The Central Authority may by notice in the Gazette prescribe the form of any document required for the purposes of this Act.

### *Consequential amendments*

## **Amendment to the Criminal Procedure and Evidence Act 2011.**

123.(1) The Criminal Procedure and Evidence Act 2011 is amended as follows-

- (a) in section 77(1) in the definition of “extradition arrest power” , by adding “and the Extradition Act 2018” after “2004”;
- (b) in section 107 by inserting after subsection (8)-
  - “(9) Nothing in this section applies to a person arrested under an extradition arrest power.”;
- (c) in section 108(1), substitute subparagraphs (a) and (b) with-
  - “(a) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence;
  - (b) bail grantable in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) is being issued,

whether under an enactment or at common law; or

(c) bail grantable in connection with extradition proceedings in respect of an offence”;

(d) in section 110(3)-

(i) by deleting the words “or proceedings against a fugitive offender for the offence”; and

(ii) by inserting after subsection (3)-

“(3A) This section also applies to a person whose extradition is sought in respect of an offence, when-

(a) he appears or is brought before the court in the course or in connection with extradition proceedings in respect of the offence; or

(b) he applies to court for bail or for a variation of the conditions on bail in connection with the proceedings.

(3B) But subsection (3A) above does not apply if the person is alleged to be unlawfully at large after conviction of the offence”;

(e) in section 117(1), the first paragraph is substituted with-

“If the Magistrates’ Court has granted bail in criminal proceedings in connection with an offence, or proceedings for an offence, to which this section applies, or if a police officer has granted bail in criminal proceedings in connection with proceedings for such an offence, or the Magistrates’ Court or a police officer has granted bail in connection with extradition proceedings, the court may, on application by the prosecutor for the decision to be reconsidered-”; and

(f) in section 119-

(i) after subsection (1) insert-

“(1A) If the Magistrates’ Court grants bail to a person in connection with extradition proceedings, the prosecution may appeal to the Supreme Court against the grant of bail.”;

- (ii) In subsection (2) for “Such an appeal” substitute “An appeal under subsection (1) or (1A)”;
- (iii) in subsection (3)-  
after “subsection (1)” insert “or (1A)”;  
for “Magistrates’ Court” substitute “court which has granted bail”; and  
delete “such”.
- (iv) in subsection (4), for “Magistrates’ Court” substitute “court which has granted bail”;
- (v) in subsection (5), for “Magistrates’ Court” substitute “court which has granted bail”;
- (vi) in subsection (7)-  
after “subsection (1)” insert “or (1A)”;  
and  
delete “Magistrates”;
- (vii) in subsection “(9)(b)” for “reference in subsection (5) to remand in custody is” substitute “references in subsections (5) and (8) to remand in custody are”; and
- (viii) After subsection 10 insert “(11) In this section “extradition proceedings” means proceedings under the Extradition Act 2018.”.

**(Taken from Schedule 2 of the 2003 Act)**

## **SCHEDULE 1**

### **Section 79(6)(a)**

#### **List of conduct constituting extradition offence**

1. Participation in a criminal organisation.
2. Terrorism.
3. Trafficking in human beings.
4. Sexual exploitation of children and child pornography.

5. Illicit trafficking in narcotic drugs and psychotropic substances.
6. Illicit traffic in weapons, munitions and explosives.
7. Corruption.
8. Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests.
9. Laundering of the proceeds of crime.
10. Counterfeiting currency, including of the euro.
11. Computer-related crime.
12. Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties.
13. Facilitation of unauthorised entry and residence.
14. Murder, grievous bodily injury.
15. Illicit trade in human organs and tissue.
16. Kidnapping, illegal restraint and hostage-taking.
17. Racism and xenophobia.
18. Organised or armed robbery.
19. Illicit trafficking in cultural goods, including antiques and works of art.
20. Swindling.
21. Racketeering and extortion.
22. Counterfeiting and piracy of products.
23. Forgery of administrative documents and trafficking therein.
24. Forgery of means of payment.
25. Illicit trafficking in hormonal substances and other growth promoters.
26. Illicit trafficking in nuclear or radioactive materials.

27. Trafficking in stolen vehicles.
28. Rape.
29. Arson.
30. Crimes within the jurisdiction of the International Criminal Court.
31. Unlawful seizure of aircraft/ships.
32. Sabotage.

(Taken from Part 1 of Schedule 2 of the 2003 Act)

**SCHEDULE 2**

**Section 108**

**Re-extradition: Modifications**

1. In section 14, omit subsections (2), (3), (5) and (8).
2. In section 14, for subsection (4) substitute with-
  - “(4) The Magistrate must decide whether the offence specified in the request is an extradition offence.”
3. In section 14(6), for “any of the questions” substitute with “the question”.
4. In section 14(7), for “those questions” substitute with “that question”.
5. In section 17(1), omit paragraph (c).
6. Omit section 20.
7. In section 25(3), for the words from “must send the case” to “extradited” substitute “may order the person to be extradited to the Requesting State.”.
8. In section 25, after subsection (3) insert-
  - “(4) If the Magistrate makes an order under subsection (3) he must remand the person in custody or on bail to wait for his extradition to the Requesting State.
  - (5) If the Magistrate remands the person in custody he may later grant bail.”.
9. In section 39(1)-

- (a) for the words from “sends a case” to “extradited” substitute “orders a person’s extradition under this Part”; and
  - (b) for “the relevant decision” substitute “the order”.
10. In section 39(2), for the words from “the person” to “the Central Authority” substitute with “the order is made under section 64”.
11. In section 39, omit subsections (3), (5), (6), (7) and (8).
12. In section 39(9), for the words from “the Central Authority” to “person” substitute with “the order is made”.
13. In section 40, omit subsections (1)(b), (6) and (7).
14. In section 42, omit subsections (1)(b), (7) and (8).
15. In section 53(1)(a), for “the Central Authority” substitute with “the Magistrate”.
16. In section 53(1)(b), for the words from “permitted period” to “extradition” substitute with “period permitted under that section”.
17. In section 53, after subsection (1) insert-
- “(1A) But this section does not apply if the order is made under section 64.”.
18. In section 53(2), for “the Central Authority” substitute with “the Magistrate”.
19. In section 55(1)(a), for “the Central Authority” substitute with “the Magistrate”.
20. In section 55, in subsections (2) to (6) and in each place in subsection (7), for “the Central Authority” substitute with “the Magistrate”.
21. In section 56, after subsection (1) insert-
- “(1A) But this section does not apply if the order for the person’s extradition is made under section 64.”
22. In section 57(2)(a), for “a certificate is issued under section 5 in respect of the request” substitute with “the person would (apart from section 107(1) be released from detention pursuant to the Gibraltar sentence (whether or not on licence)”.

23. In section 63(1), for the words from “arrested” to “requested” substitute with “brought before the Magistrate under section 107(1) may consent to his extradition to the State in which the overseas sentence was imposed”.

24. In section 63(3), before paragraph (a) insert-

“(aa) must be given before the Magistrate;”.

25. In section 63, omit subsections (4) and (5)

26. In section 64, after subsection (1) insert-

“(1A) The Magistrate must remand the person in custody or on bail.

(1B) If the Magistrate remands the person in custody he may later grant bail.”.

27. In section 64(4), for the words from “send the case” to “extradited” substitute with “within the period of 10 days starting with the day on which consent is given order the person’s extradition to the Requesting State”.

28. In section 64, after subsection (5) insert-

“(6) Subsection (4) has effect subject to section 64B.

(7) If subsection (4) is not complied with and the person applies to the Magistrate to be discharged the Magistrate must order his discharge.”.

29. After section 64 insert-

“Extradition to Requesting State following consent.

64A.(1) This section applies if the Magistrate makes an order under section 64(4) for a person’s extradition to the Requesting State.

(2) The person must be extradited to the Requesting State before the end of the required period, which is 28 days starting with the day on which the order is made.

(3) If subsection (2) is not complied with and the person applies to the Magistrate to be discharged the Magistrate must order his discharge, unless reasonable cause is shown for the delay.

**Extradition claim following consent.**

64B.(1) This section applies if-

- (a) a person consents under section 63 to his extradition to the Requesting State; and
  - (b) before the Magistrate orders his extradition under section 64(4), the Magistrate is informed that the conditions in subsection (2) or (3) are met.
- (2) The conditions are that-
  - (a) the Central Authority has received another valid request for the person's extradition to a Requesting State;
  - (b) the other request has not been disposed of.
- (3) The conditions are that-
  - (a) a European arrest warrant has been issued in respect of the person;
  - (b) the European arrest warrant has not been disposed of.
- (4) The Magistrate must not make an order under section 64(4) until he is informed what order has been made under section 62(2) or 103(2).
- (5) If the order under section 62(2) or 103(2) is for further proceedings on the request under consideration to be deferred until the other request, or the European arrest warrant has been disposed of, the Magistrate must remand the person in custody or on bail.
- (6) If the Magistrate remands the person in custody he may later grant bail.
- (7) If-
  - (a) the order under section 62(2) or 103(2) is for further proceedings on the request under consideration to be deferred until the other request, or the European arrest warrant, has been disposed of; and
  - (b) an order is made under section 104 for proceedings on the request under consideration to be resumed, the period specified in section 64(4) must be taken to be 10 days starting with the day on which the order under section 104 is made.
- (8) If the order under section 62(2) or 103(2) is for further proceedings on the other request, or the European arrest warrant, to be deferred until the request under consideration has been disposed of, the period specified in section 64(4) must be taken to be 10 days starting with the day on which the Magistrate is informed of the order.

## **Extradition following deferral for competing claim.**

64C.(1) This section applies if-

- (a) an order is made under section 64(4) for a person to be extradited to the Requesting State in pursuance of a request for his extradition;
- (b) before the person is extradited to the Requesting State an order is made under section 62(2) or 103(2) for the person's extradition in pursuance of the request to be deferred;
- (c) the Magistrate makes an order under section 105(2) for the person's extradition in pursuance of the request to cease to be deferred.

(2) The required period for the purposes of section 64A(2) is 28 days starting with the day on which the order under section 105(2) is made.”.