

Mutual Legal Assistance (Council of Europe) Act 2018

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Principal Act

Act. No. 2018-28

Commencement

27.10.2019

Assent

20.12.2018

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AN ACT TO GIVE EFFECT IN GIBRALTAR TO THE COUNCIL OF EUROPE'S EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS MADE IN STRASBOURG ON 20TH APRIL 1959.

Part 1 Preliminary

Title.

1. This Act may be cited as the Mutual Legal Assistance (Council of Europe) Act 2018 and comes into force on the extension to Gibraltar of the Council of Europe's European Convention on Mutual Assistance in Criminal Matters made in Strasbourg on 20th April 1959.

Interpretation.

2.(1) In this Act—

“Convention” means the Council of Europe's European Convention on Mutual Assistance in Criminal Matters made in Strasbourg on 20th April 1959;

“relevant offence” means a criminal offence—

- (a) which is not a political offence, an offence connected with a political offence or a fiscal offence; and
- (b) the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State;

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

(2) The terms “criminal proceedings”, “evidence”, “Government”, “Minister”, “offence” and “process” have the same meaning as in the Mutual Legal Assistance (International) Act 2005.

Jurisdiction.

3. A court in Gibraltar shall have jurisdiction to hear any matter under this Act.

Part 2 Judicial Authority

Judicial Authority.

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4. The Minister or any such person or persons as he may designate by Notice in the Gazette is the Judicial Authority in Gibraltar for the purposes of this Act.

Part 3 Requests for assistance

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

5.(1) The Mutual Legal Assistance (International) Act 2005 shall apply in relation to relevant offences to requests for assistance in criminal proceedings-

- (a) received by the Judicial Authority in Gibraltar and made by a State under the Convention where the assistance requested is for-
 - (i) the service of process;
 - (ii) the procurement of evidence or the transmission of articles to be produced in evidence, records or documents;
 - (iii) the temporary transfer of a prisoner for the purpose of his appearance as a witness or for the purpose of confrontation (or the transit through Gibraltar of such a person); and
- (b) from Gibraltar for assistance in a State outside Gibraltar where the assistance requested is for-
 - (i) the service of process;
 - (ii) the procurement of evidence or the transmission of articles to be produced in evidence, records or documents;
 - (iii) the temporary transfer of a prisoner for the purpose of his appearance as a witness or for the purpose of confrontation (or the transit through Gibraltar of such a person);

as if that State is party to an agreement with the Government on mutual legal assistance in criminal matters based on the principle of reciprocity and is listed in Schedule 2 of that Act.

(2) The extent of the application of the Mutual Legal Assistance (International) Act 2005 is subject to regulations made by the Minister under section 14.

Refusal to provide assistance.

6.(1) Assistance under this Act may, in addition to the criteria contained in section 3(2) of the Mutual Legal Assistance (International) Act 2005, be refused if the person who is the

subject of a request for assistance has been convicted or acquitted in Gibraltar, or in a third State, of an offence which arises from the same conduct as that giving rise to the proceedings in the requesting State in respect of that person.

(2) If a request for assistance is refused, the Judicial Authority shall inform the Requesting State of that decision and the reason for it as soon as possible.

(3) If an authority in Gibraltar, other than the Judicial Authority, receives a direct request for assistance, it shall-

- (a) transmit the request to the Judicial Authority; and
- (b) directly inform the requesting State that the request has been transmitted to the Judicial Authority in Gibraltar.

Execution of letters rogatory in Gibraltar.

7.(1) With the prior approval of the Minister, the Judicial Authority may make arrangements to allow representatives of the requesting State to be present for the execution of the letters rogatory in Gibraltar.

(2) If the request referred to in subsection (1) is acceded to, the Judicial Authority shall, as soon as possible, notify the judicial authority of the requesting State about the time and place of the execution of the request, the authority or official designated to carry out the execution of the request and the procedures and conditions required by the Judicial Authority for the conduct of such execution.

Service of process.

8.(1) Service by the Judicial Authority may be effected by simple transmission of the writ or record to the person to be served unless the requesting State expressly requests-

- (a) that service be effected by the Judicial Authority in the manner provided for the service of analogous documents under its own law; or
- (b) in a special manner consistent with such law.

(2) The Judicial Authority shall provide proof of service to the requesting State in the following manner-

- (a) by means of a receipt dated and signed by the person served; or
- (b) by means of a declaration made by the Judicial Authority that service has been effected and stating the form and date of such service.

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(3) Any of the documents referred to in subsection (2) shall be sent by the Judicial Authority to the requesting State as soon as possible.

(4) If a witness or expert is required to appear as a party or attend as a witness, and fails to answer a summons, he shall not be subject to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting State and is there again summoned.

(5) If the requesting State considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the Judicial Authority shall invite the witness or expert to appear.

(6) The Judicial Authority shall inform the requesting State of any response received by the witness or expert.

(7) In the case of subsections (5) and (6), the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.

(8) If a specific request is made, the Judicial Authority may provide the witness or expert with payment in advance.

(9) The amount advanced under subsection (8) shall be endorsed on the summons and shall be refunded by the requesting State.

Part 4 Temporary Transfer of Prisoners

Temporary transfer of prisoners.

9.(1) The Judicial Authority shall petition the court for an order that a person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting State be temporarily transferred to the territory where the hearing is intended to take place, provided that-

- (a) he shall be sent back within the period stipulated by the Judicial Authority;
- (b) the person in custody consents;
- (c) his presence is not necessary at criminal proceedings pending in Gibraltar;
- (d) the transfer is not liable to prolong his detention; and
- (e) there are no other overriding grounds for not transferring him to the territory of the requesting State.

(2) The transferred person shall remain in custody in the territory of the requesting State unless the Judicial Authority applies for his release.

**Part 5
Immunity of witnesses**

Immunity of witnesses.

10.(1) In circumstances where section 20 of the Mutual Legal Assistance (International) Act 2005 applies, the Judicial Authority shall only consider the granting of immunity-

- (a) where this is specifically requested by the person to whom the immunity would apply; or
- (b) by the judicial authorities of the State from whom assistance is requested.

(2) A request for immunity shall not be granted where the Judicial Authority considers that granting it would not be in the public interest.

**Part 6
General**

Authentication of documents.

11.(1) Any evidence or documents transmitted for the purposes of this Act and pursuant to the Convention shall not require any form of authentication.

(2) The Judicial Authority may transmit certified copies or certified photocopies of records or documents requested, unless the requesting State expressly requests the transmission of originals, in which case the requested State shall make every effort to comply with the request.

Language.

12.(1) Any requests for assistance and annexed documents made to the Judicial Authority and any answers provided shall be in the English language or accompanied by translations in the English language.

(2) This section is without prejudice to any provisions concerning the translation of requests or annexed documents contained in the agreements or arrangements in force or to be made between Gibraltar and any Contracting State or States.

Expenses.

13. Subject to section 8(8) and (9), execution of requests for assistance shall not entail refunding of expenses except-

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- (a) for expenses incurred by the attendance of experts in Gibraltar; or
- (b) the transfer of a person in custody under section 9.

Regulations.

14. The Minister may by regulation make provision-

- (a) for such matters as are reasonably necessary for or consequential or incidental to the due administration of this Act;
- (b) giving effect to any obligation of the Government arising from the application to Gibraltar of the Convention or any other relevant international obligation which builds upon the Convention including, but not limited to, modifying the provisions of the Mutual Legal Assistance (International) Act 2005 as extended by this Act.

Immunity.

15. The Government and the Judicial Authority shall not be liable in damages for anything done or omitted in the discharge of their functions under this Act, unless it is shown that the act or omission was in bad faith.

Relationship with other legislation.

16. Nothing in this Act shall affect the provision of assistance under the Mutual Legal Assistance (International) Act 2005 or any other enactment.

Mutual legal assistance arrangements with the United Kingdom.

17. The Government may, by regulations, make provision extending to the United Kingdom in whole or in part the provisions of this Act either with or without modifications.