

Mutual Legal Assistance (Merida Convention) Act 2023

Principal Act

Act. No. 2023-32

Commencement

27.7.2023

Assent

24.7.2023

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Mutual Legal Assistance (Merida Convention) **2023-32** Act 2023

AN ACT TO IMPLEMENT, IN PART, THE OBLIGATIONS IN THE UNITED NATIONS CONVENTION AGAINST CORRUPTION MADE IN MERIDA AND NEW YORK ON THE 9TH DECEMBER 2003 RELATING TO MUTUAL LEGAL ASSISTANCE; TO MAKE FURTHER PROVISION FOR MUTUAL LEGAL ASSISTANCE BETWEEN GIBRALTAR AND CONTRACTING STATES; TO ENABLE FURTHER PROVISION TO BE MADE BY REGULATIONS; AND FOR CONNECTED PURPOSES.

PART 1 PRELIMINARY

Title and commencement.

1. This Act may be cited as the Mutual Legal Assistance (Merida Convention) Act 2023 and comes into operation on the day of publication.

Interpretation.

2.(1) In this Act-

“Central Authority” means the person designated under section 3;

“competent authority” means in relation to a request which concerns a contracting State, that is not Gibraltar-

- (a) a court exercising jurisdiction in the place which relates to the request; or
- (b) any other authority recognised by the Government of that State, as the appropriate authority for dealing with requests of that kind;

“Competent Officer” means a person to whom section 4 applies;

“Convention” means the United Nations Convention against Corruption made in Merida and New York adopted on 9 December 2003;

“contracting State” means a State that has ratified the Convention or a territory covered by the ratification, and where the context so requires, Gibraltar is deemed to be a contracting State;

“court” includes a tribunal;

“criminal investigation” means a criminal investigation commenced in respect of a relevant offence under the law of a contracting State;

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“criminal proceeding” means a criminal proceeding commenced in a contracting State in respect of a relevant offence, in which a civil order may be made;

“Minister” means the minister with responsibility for Justice;

“property” means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in the assets;

“relevant offence” has the meaning given in section 7;

“request” means a request for assistance under the Convention;

“videoconferencing” means the set of interactive telecommunications technologies which allow two or more locations to interact through simultaneous two-way video and audio transmissions.

(2) Any reference in this Act to an “order” includes any order, decree, direction or judgment or any part of it, however described.

PART 2 AUTHORITIES

Central Authority.

3. The Central Authority for the purposes of sections 14, 15, 17, 18, 19, 20, 22, 23 and 28 is the Minister, or any other person as the Government may appoint from time to time by notice in the Gazette.

Competent officers.

4. The Competent Officers for the purposes of sections 14 and 15 are-

- (a) the Attorney General;
- (b) the Director of Public Prosecutions;
- (c) Crown Counsels; and
- (d) any other persons or body as the Government may designate by notice in the Gazette.

Functions and duties of the Central Authority.

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- 5.(1) The Central Authority must perform the functions assigned to it or duties conferred upon it under sections 14, 15, 17, 18, 19, 20, 22, 23 and 28, and as may be prescribed by any other enactment.
- (2) Without prejudice to the generality of subsection (1), the functions and duties of the Central Authority include taking any other step or action, which is necessary or incidental to the functions and duties referred to in subsection (1).

Functions and duties of the Competent officers.

- 6.(1) The Competent Officers must perform the functions assigned to them or duties conferred upon them under sections 14 and 15, and as may be prescribed by any other enactment.
- (2) Without prejudice to the generality of subsection (1), the functions and duties of the Competent Officers also include taking any other action or step-
- (a) which may be reasonable in all the circumstances to comply with a provision under the Convention, which is provided for in sections 14 and 15, or under any other enactment;
 - (b) for the purpose of an incoming request or for the purpose of an outgoing request.
- (3) The Competent Officers must undertake any other functions or duties as the Central Authority notifies in writing.

PART 3 APPLICATION OF ACT

Relevant offence.

7. For the purposes of this Act, “relevant offence” means-
- (a) an offence to which the Convention applies and is an offence under Gibraltar law and under the law of the contracting State that is a party to a request; or
 - (b) conduct that, had it occurred in Gibraltar, and, conduct that had it occurred in the other contracting State, would constitute an offence falling under paragraph (a), and
- in either paragraph (a) or paragraph (b), the punishment of which, at the time of the request, falls within the jurisdiction of a party to the request.

Scope.

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- 8.(1) A request under the Convention may be made or received if-
- (a) the criminal conduct relates to a relevant offence; and
 - (b) assistance falls within the scope of-
 - (i) this Act, or
 - (ii) an enactment that for, the purposes of seeking or providing that assistance, is to be treated as having been modified by Part 4.
- (2) Nothing in subsection (1) affects the ability to make or receive requests under any enactment.

PART 4 MODIFICATION OF LEGISLATION.

Modification of Mutual Legal Assistance (International) Act 2005.

9.(1) For the purposes of giving effect to a request made under the Convention, the Mutual Legal Assistance (International) Act 2005 is deemed to be modified in accordance with the provisions of this section.

- (2) In section 2-
- (a) after “civil proceedings” insert-

““Convention” means the United Nations Convention against Corruption made in Merida and New York adopted on 9 December 2003;”;
 - (b) after “Government” insert -

““joint investigation team” has the same meaning as in regulation 2 of the Joint Investigation Team Regulations 2014;”;
 - (c) for the definition of “offence” substitute-

““offence” has the same meaning as in section 7 of the Mutual Legal Assistance (Merida Convention) Act 2023;”;
 - (d) in the definition of “State”, after subparagraph (ii) insert-

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“(iii) a State that has ratified the Convention or a territory covered by the ratification, and where the context so requires, Gibraltar is deemed to be a State; or;”.

(3) For section 3(2) substitute-

“(2) Assistance under this Act may be refused-

- (a) if the execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Gibraltar;
- (b) if the request is not made in accordance with the applicable provisions of Gibraltar law;
- (c) where the request is not made in accordance with Article 46 of the Convention;
- (d) where the action or measure requested with regard to an offence would not be authorised under Gibraltar law had it been the subject of a criminal investigation or criminal proceeding in Gibraltar;
- (e) if the request is contrary to Gibraltar law;
- (f) where the conduct for which the request has been made does not constitute an offence.

(3) A request must not be refused under subsection (2) solely on the ground that the request relates to a fiscal offence.

(4) Where a request is refused under subsection (2), reasons must be provided to the competent authority in the requesting State.”.

(4) For section 4 substitute-

“Requests for assistance.

4.(1) Requests for assistance under sections 18, 19 or 21 must be effected through the competent authority in the requesting State or territory.

(2) For the purposes of this Act, “competent authority” means-

- (a) in relation to a request which concerns a contracting State, that is not Gibraltar-

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- (i) a court exercising jurisdiction in the place which relates to the request;
or
- (ii) any other authority recognised by the Government of that State, as the appropriate authority for dealing with requests of that kind.

Form of request and language.

- 4A.(1) Subject to subsection (2), requests must be made in writing or, where possible, by any means of communication (which includes in electronic form) capable of producing a written record under conditions that allow the Central Authority to establish the authenticity of a request.
- (2) A request may-
- (a) in an urgent case; and
 - (b) subject to the prior agreement of the authority to whom the request is made, be made in oral form, and if made orally, must be confirmed by a means that is capable of producing a written record forthwith.
- (3) A request under section 9 or section 18A which is sent from Gibraltar to a requested State must include a translation of that request into the appropriate language of the requested State, if that language is not English.”.
- (5) For section 12(4) substitute-
- “(4) A request sent to the Central Authority must contain-
- (a) the identity of the competent authority in the requesting State making the request;
 - (b) the subject matter and nature of the proceedings or investigation to which the request relates;
 - (c) the name and functions of the competent authority in the requesting State conducting the proceedings or investigation;
 - (d) a summary of the relevant facts, except in relation to requests for service of process;
 - (e) the purpose for which the evidence, information or action is sought;

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- (f) a description of the assistance sought and details of any particular procedures or formalities to be observed in giving effect to the request;
 - (g) where possible, the identity, exact location, residence, last known address and nationality of any person concerned in the request.
- (4A) If, in the opinion of the Central Authority, the information set out in a request from a requesting State is not sufficient, the Central Authority may request the requesting State to provide additional information.
- (4B) Any evidence or information obtained by a requesting State through a request may not, without the prior consent of the Central Authority, be used for any other purpose other than that specified in the request.”.
- (6) In section 15-
- (a) in subsection (1)-
 - (i) delete the full stop after subparagraph (ii) and insert “; or”;
 - (ii) after subparagraph (ii) insert-
“(iii) constitutes an offence.”.
 - (b) for subsection (2) substitute-
“(2) An application for a warrant or order by virtue of subsection (1) may only be made-
 - (a) where a direction is given under section 12(1)(b); or
 - (b) if it is an application for a warrant or order under section 12 of the Criminal Procedure and Evidence Act 2011 by a police officer for the purposes of a criminal investigation by a joint investigation team of which that police officer is a member and under the instructions of the Commissioner of Police.”.
- (7) In section 18-
- (a) omit “and” in subsection (1)(d);
 - (b) substitute the full stop in subsection (1)(e) with a semi-colon and add the following paragraphs-

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- “(g) the Central Authority and the requesting State agree the conditions for transfer;
 - (h) the period of custody in the requesting State is deducted from the period of detention the person undergoes in Gibraltar.”;
 - (c) in subsection (2)(a) omit “under the law of the State or territory in question”;
 - (d) omit subsection (3);
 - (e) after subsection (6) insert-
 - “(7) The person that is transferred under subsection (2) must remain in the custody of the requesting State unless the Central Authority applies for the person’s release.
 - (8) An order under this section authorises-
 - (a) the taking of the person in custody to a place in Gibraltar and the person’s delivery at a place of departure from Gibraltar into the custody of a person representing the requesting State;
 - (b) the bringing of that person in custody back to Gibraltar and the person’s transfer in custody to the place where they are liable to be detained under the sentence or order to which that person is subject.
 - (9) The costs of transfer of the person in custody from and to Gibraltar under this section shall be borne by the requesting State.”.
- (8) After section 18 insert-

“Transfer of person in custody to give evidence or assist in Gibraltar.

18A.(1)Where-

- (a) there is a criminal investigation or criminal proceeding in Gibraltar which requires the presence of a person held in custody in a requested State to be temporarily transferred to Gibraltar for the purpose of assisting here with that criminal investigation or criminal proceeding; and
- (b) there is an agreement between the Central Authority and the requested State relating to subsection (a),

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the Central Authority must apply to the court for an order providing that the person in custody in that State be temporarily transferred for this purpose.

- (2) This section applies to a person who is detained in custody in a requested State-
 - (a) by virtue of a sentence or order of a court exercising jurisdiction in that requested State; or
 - (b) in consequence of having been transferred there, or responsibility for that person's detention having been transferred to the requested State from Gibraltar, or any other state.
- (3) An order may be made by the court in respect of a person in custody under subsection (1) only if –
 - (a) the requirements in subsection (4) are agreed to by the Central Authority and requested State; and
 - (b) it appears to the court that it is necessary and proportionate for the person to be present in Gibraltar to assist for the purposes of a criminal investigation or criminal proceeding in Gibraltar.
- (4) The requirements are that-
 - (a) the period of detention the person undergoes in Gibraltar must be deducted from the period of custody in the requested State;
 - (b) the person must be sent back within the period stipulated by the requested State;
 - (c) the person has made a written statement consenting to be transferred for the purpose mentioned in subsection (1); and
 - (d) there are no other overriding grounds for not transferring the person to Gibraltar.
- (5) The written statement consenting to be transferred for the purpose mentioned in subsection (1) cannot be withdrawn once a court grants an order under subsection (3).
- (6) An order under this section authorises-
 - (a) the bringing of the person to Gibraltar;

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- (b) the taking of that person to, and that person's detention in custody at, any place or places specified in the order; and
 - (c) the return of the person to the requested State.
- (7) The person must remain in the custody of the Central Authority until the requested State applies for their release.
- (8) The costs of transfer of the person in custody to and from Gibraltar under this section must be borne by the Government of Gibraltar.
- (9) Where a person has been transferred under this section to Gibraltar, that person must not be prosecuted, detained or subjected to any other restriction of personal liberty in Gibraltar in respect of acts or convictions before their departure from Gibraltar.
- (10) Subsection (9) does not apply where the person having had for a period of fifteen consecutive days from the date when that person's presence is no longer required in Gibraltar, an opportunity of leaving, has nonetheless remained in Gibraltar, or having left it, has returned.
- (11) A person is not subject to the Immigration, Asylum and Refugee Act in respect of that person's entry into Gibraltar in accordance with an order under this section, but if the order ceases to have effect while that person is still in Gibraltar-
- (a) that person has to be treated for the purpose of that Act as if that person is unlawfully present in Gibraltar; and
 - (b) the provisions of Part VII of that Act shall have effect.”.
- (9) After section 21 insert-

“Delay in assistance.

21A. Where it is not possible to achieve a timely execution of a request, the Central Authority must-

- (a) without delay, inform the requesting State, by any means, giving the reasons for the delay; and
- (b) consult the requesting State on the time required to carry out the request.

Postponement of assistance.

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- 21B.(1) The execution of a request may be postponed by the Central Authority-
- (a) until such time as the Central Authority deems reasonable, where the execution of the request might prejudice a criminal investigation or criminal proceeding in Gibraltar; or
 - (b) until such time as the evidence or information sought in the request are no longer required for that criminal investigation or criminal proceeding.
- (2) If it is likely that a request is to be postponed under subsection (1), the Central Authority must consult the requesting State to consider whether assistance may be granted subject to such terms and conditions as it deems necessary, and, if the requesting State accepts assistance subject to those terms and conditions, the request may be acted on by the Central Authority subject those terms and conditions.

Confidentiality.

- 21C.(1) Except to the extent necessary to execute the request, or as provided in subsection (2), the fact and substance of a request received by or made by or through the Central Authority must not be disclosed by any person, other than in the course of the exercise of their duties.
- (2) Where as a result of a request, information or evidence is received, or as the case may be, provided which is exculpatory to an accused person, any restriction under subsection (1) on the disclosure to that person does not apply.
- (3) Where in relation to a request, it is not possible to comply with the requirement of confidentiality set out in subsection (1)-
- (a) the Central Authority must promptly inform the requesting State, where the Central Authority receives a request;
 - (b) the requested State must promptly inform the Central Authority, where the Central Authority is seeking assistance.
- (4) Where subsection (2) applies-
- (a) the requesting State must notify the Central Authority before any disclosure is made, and if so requested, must consult with the Central Authority; and
 - (b) where advance notice is not possible, the requesting State must inform the Central Authority of the disclosure without delay.”.

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(10) For section 22 substitute-

“Costs.

22.(1) The ordinary costs and expenses of executing a request in Gibraltar, unless otherwise agreed with the requesting State or unless otherwise provided under this Act, are to be borne by the Government of Gibraltar.

(2) If costs and expenses of an extraordinary nature are required to fulfil the request, the Central Authority must consult the requesting State to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.”.

Modification of the Proceeds of Crime Act 2015.

10. For the purposes of giving effect to a request made under the Convention, section 182(1) of the Proceeds of Crime Act 2015 is deemed to be modified by substituting the definition of “criminal conduct” with-

““criminal conduct” is conduct which constitutes a relevant offence as defined in section 7(a) or (b) of the Mutual Legal Assistance (Merida Convention) Act 2023.”.

Modification of the Proceeds of Crime Act 2015 (External Investigations Ancillary to a Criminal Investigation or Proceeding) Order 2019.

11.(1) For the purposes of giving effect to a request made under the Convention, the Proceeds of Crime Act 2015 (External Investigations Ancillary to a Criminal Investigation or Proceeding) Order 2019 is deemed to be modified in accordance with the provisions of this section.

(2) Insert after article 4-

“Refusal.

4A.(1) Assistance under this Order may be refused-

- (a) if the execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Gibraltar;
- (b) if the request is not made in accordance with the applicable provisions of Gibraltar law;

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- (c) where the request is not made in accordance with Article 46 of the United Nations Convention against corruption made in Merida and New York on the 9th December 2003;
 - (d) where the action requested with regard to the offence would not be permitted under Gibraltar law, if it had been the subject of a criminal investigation or criminal proceeding in Gibraltar;
 - (e) if the request is contrary to Gibraltar law;
 - (f) where the conduct for which the request has been made does not constitute criminal conduct;
- (2) A request must not be refused under paragraph (1) solely on the ground that the request relates to a fiscal offence.
- (3) Where a request is refused under paragraph (1), reasons must be provided to the contracting State making the request.
- (4) In this Order, “contracting State” means a State that has ratified the Convention referred to in paragraph (1)(c) or a territory covered by the ratification.

Content of request.

- 4B. Notwithstanding any other applicable requirements under this Order, a request sent to the Central Authority must contain-
- (a) the identity of the authority in the contracting State making the request;
 - (b) the subject matter and nature of the criminal investigation or criminal proceeding to which the request relates;
 - (c) the name and functions of the authority in the contracting State conducting the criminal investigation or criminal proceeding;
 - (d) a summary of the relevant facts, except in relation to requests for service of process;
 - (e) the purpose for which the evidence, information or action is sought;
 - (f) a description of the assistance sought and details of any particular procedures or formalities to be observed in giving effect to the request;

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(g) where possible, the identity, exact location, residence, last known address and nationality of any person concerned in the request.”.

(3) In Article 19(2)-

(a) at the end of subparagraph (f) for the full stop substitute a comma; and

(b) after subparagraph (f) insert-

“(g) in the case of proceedings for an offence covered by section 7 of the Mutual Legal Assistance (Merida Convention) Act 2023, and that offence is not otherwise covered by subparagraph (b).”.

(4) In Article 26(2)-

(a) at the end of subparagraph (d) for the full stop substitute a comma; and

(b) after subparagraph (d) insert-

“(e) on a prosecution for an offence within the ambit of section 7 of the Mutual Legal Assistance (Merida Convention) Act 2023, and that offence is not otherwise covered by subparagraph (a).”.

(5) In Article 31(2)-

(a) at the end of subparagraph (c) for the full stop substitute a comma; and

(b) after subparagraph (c) insert-

“(d) on a prosecution for an offence within the ambit of section 7 of the Mutual Legal Assistance (Merida Convention) Act 2023, and that offence is not covered by subparagraph (a).”.

Modification of the Proceeds of Crime Act 2015 (External Investigations in a Civil Context) Order 2019.

12.(1) For the purposes of giving effect to a request made under the Convention, the Proceeds of Crime Act 2015 (External Investigations in a Civil Context) Order 2019 is deemed to be modified in accordance with the provisions of this section.

(2) Insert after Article 4-

“Refusal.

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- 4A.(1) Assistance under this Order may be refused-
- (a) if the execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Gibraltar;
 - (b) if the request is not made in accordance with the applicable provisions of Gibraltar law;
 - (c) where the request is not made in accordance with Article 46 of the United Nations Convention against corruption made in Merida and New York on the 9th December 2003;
 - (d) where the action requested with regard to the offence would not be permitted under Gibraltar law, had it been the subject of a criminal investigation or criminal proceedings in Gibraltar;
 - (e) if the request is contrary to Gibraltar law;
 - (f) where the conduct for which the request has been made does not constitute criminal conduct;
- (2) A request must not be refused under paragraph (1) solely on the ground that the request relates to a fiscal offence.
- (3) Where request is refused under paragraph (1), reasons must be provided to the contracting State making the request.
- (4) In this Order, “contracting State” means a State that has ratified the Convention referred to in paragraph (1)(c) or a territory covered by the ratification.

Content of request.

- 4B. Notwithstanding any other applicable requirements under this Order, a request sent to the Central Authority must contain-
- (a) the identity of the authority in the contracting State making the request;
 - (b) the subject matter and nature of the investigation or proceedings to which the request relates;
 - (c) the name and functions of the authority in the contracting State conducting the investigation or proceedings;

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- (d) a summary of the relevant facts, except in relation to requests for service of process;
- (e) the purpose for which the evidence, information or action is sought;
- (f) a description of the assistance sought and details of any particular procedures or formalities to be observed in giving effect to the request;
- (g) where possible, the identity, exact location, residence, last known address and nationality of any person concerned in the request.”.

(3) In Article 19(2)-

- (a) at the end of subparagraph (f) for the full stop substitute a comma; and
- (b) insert after subparagraph (f)-
 - “(g) in the case of proceedings for an offence covered by section 7 of the Mutual Legal Assistance (Merida Convention) Act 2023, and that offence is not otherwise covered by subparagraph (a).”

(4) In Article 26(2)-

- (a) at the end of subparagraph (d) for the full stop substitute a comma; and
- (b) insert after subparagraph (d)-
 - “(e) on a prosecution for an offence within the ambit of section 7 of the Mutual Legal Assistance (Merida Convention) Act 2023, and that offence is not otherwise covered by subparagraph (a).”

(5) In Article 31(2)-

- (a) at the end of subparagraph (c) for the full stop substitute a comma; and
- (b) insert after subparagraph (c)-
 - “(d) on a prosecution for an offence within the ambit of section 7 of the Mutual Legal Assistance (Merida Convention) Act 2023, and that offence is not covered by subparagraph (a).”

Modification of the Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019.

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13.(1) For the purposes of giving effect to a request made under the Convention, the Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019 is deemed to be modified in accordance with this section.

(2) Insert after Article 5-

“Refusal.

5A. Assistance under this Order may be refused-

- (a) if the execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Gibraltar;
 - (b) if the request is not made in accordance with the applicable provisions of Gibraltar law;
 - (c) where the request is not made in accordance with the provisions of the United Nations Convention against Corruption made in Merida and New York on the 9th December 2003;
 - (d) where the action requested with regard to the offence is not permitted under Gibraltar law, had it been the subject of a criminal investigation or criminal proceeding in Gibraltar;
 - (e) if the request is contrary to Gibraltar law;
 - (f) where the conduct for which the request has been made does not constitute criminal conduct;
 - (g) in the case of a request under Article 55 of the United Nations Convention against Corruption made in Merida and New York on the 9th December 2003, the Central Authority does not receive sufficient or timely evidence, or where the property concerned is of a *de minimis* value.
- (2) A request must not be refused under paragraph (1) solely on the ground that the request relates to a fiscal offence.
- (3) Where request is refused under paragraph (1), reasons must be provided to the contracting State.
- (4) Where subparagraph (g) applies, before arranging to have any measures lifted or set aside in Gibraltar, the authority in the contracting State must, wherever possible, be given an opportunity to present its reasons in favour of continuing the measure.

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- (5) In this Order, “contracting State” means a State that has ratified the Convention referred to in paragraph (1)(g) or a territory covered by the ratification.

Content of request.

5B.(1) Notwithstanding any requirement or condition contained in this Order, a request sent to the Central Authority must contain-

- (a) the identity of the authority in the contracting State making the request;
- (b) the subject matter and nature of the criminal investigation or criminal proceedings to which the request relates;
- (c) the name and functions of the authority in the contracting State conducting the criminal investigation or criminal proceeding;
- (d) a summary of the relevant facts;
- (e) the purpose for which the assistance is sought;
- (f) a description of the assistance sought and details of any particular procedures or formalities to be observed in giving effect to the request;
- (g) where possible, the identity, exact location, residence, last known address and nationality of any person concerned in the request;
- (h) in the case of a request under Article 55 of the United Nations Convention against Corruption made in Merida and New York on the 9th December 2003-
 - (i) a description of the property and, where available, the exact location of the property;
 - (ii) the estimated value of the property;
 - (iii) a statement of facts relied upon to enable the assistance to be sought;
 - (iv) an authenticated copy of any order;
 - (v) a statement of facts and information as to the extent to which the execution of any order is requested;

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- (vi) a statement specifying the measures taken by the contracting State to provide adequate notification to bona fide third parties and to ensure that any bona fide third parties have been afforded a fair hearing;
- (vii) a statement that the order is a final order and there is no prospect of appeal, or that the time for filing an appeal has expired;
- (viii) a description of the actions requested.”.

(3) In Article 67, in the definition of “relevant seizure power”, in subparagraph (d), insert “as modified by the Mutual Legal Assistance (Merida Convention) Act 2023” after “section 15 of the Mutual Legal Assistance (International) Act 2005.”.

PART 5

HEARING EVIDENCE THROUGH VIDEOCONFERENCE

Hearing by videoconference- incoming request.

14.(1) This section applies where the Central Authority receives a request from a competent authority in a contracting State for the hearing of a witness or expert witness by videoconference or other audiovisual transmission and where the following conditions are satisfied-

- (a) there are criminal proceedings in the contracting State;
- (b) the witness or expert witness, as the case may be, is present in Gibraltar; and
- (c) the attendance in person of that witness or expert witness at the criminal proceedings is not possible or desirable.

(2) For the purposes of this section and section 15, “witness” or “expert witness” does include a person accused of having committed a relevant offence or accused in criminal proceedings, but not in relation to the trial of that person.

(3) The requests sent to the Central Authority from a competent authority in a contracting State must contain-

- (a) details of the person making the request;
- (b) the object of and the reason for the request;
- (c) where possible, the identity and nationality of the person who is the subject of the request;

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- (d) where necessary, the name and address of the person to be served with a summons;
 - (e) the names of the persons who will be conducting the hearing;
 - (f) the reasons why it is not desirable or possible for the witness or expert witness to attend the hearing in person;
 - (g) a written statement from the witness or expert witness consenting to the hearing by videoconference or other audiovisual transmission.
- (4) The Central Authority must by notice in writing-
- (a) nominate a court where the person may be heard;
 - (b) make arrangements with the court where the person is to be heard;
 - (c) direct a Competent Officer to attend to any arrangements on its behalf.
- (5) Subject to subsection (7), the nominated court must-
- (a) agree the practical arrangements with the competent authority in the contracting State; and
 - (b) on the application of a Competent Officer, issue an order that the witness or expert witness, who is the subject of the request, to attend at a date, time and venue to provide assistance by videoconference or other audiovisual transmission, and to remain in attendance until excused by the court.
- (6) If the technical means for videoconference are not available, the Central Authority must use any other electronic means as may be available to it for the purpose in subsection (2) as agreed with the competent authority in the contracting State.
- (7) Before acceding to a request under subsection (5) the nominated court must be satisfied that the following requirements are met-
- (a) that the nominated court has the technical means to carry out the hearing; and
 - (b) that the execution of a request under this section is not contrary to the fundamental principles of Gibraltar law.
- (8) The written statement referred to in subsection (3) (g) must be in the English language, and if not in the English language, must be accompanied by an English translation.

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(9) The following rules apply where a hearing is held by videoconference or other audiovisual transmission-

- (a) the person must give evidence before the nominated court;
- (b) the nominated court must be responsible for ensuring the identity of the person to be heard and that the fundamental principles of Gibraltar law are respected;
- (c) where the nominated court is of the view that during the hearing the fundamental principles of Gibraltar law are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;
- (d) measures for the protection of the person to be heard must be agreed, where necessary, between the nominated court and the competent authority in the contracting State;
- (e) at the request of the competent authority in the contracting State or the person to be heard, the nominated court must ensure the person to be heard is assisted by an interpreter, if necessary; and
- (f) in advance of the hearing, the person to be heard may claim the right not to testify which would accrue to them under the law of the contracting State or under Gibraltar law.

(10) Without prejudice to any measures which may have been introduced under subsection (9)(d), on the conclusion of the hearing the nominated court must draw up minutes indicating-

- (a) the date and place of the hearing;
- (b) the identity of the person heard;
- (c) the identities and functions of all other persons in Gibraltar participating in the hearing;
- (d) any oaths taken; and
- (e) the technical conditions under which the hearing took place,

and the nominated court must forward these minutes to the competent authority in the contracting State.

(11) If a person fails to comply with an order or contravenes this section, the nominated court may exercise any of its powers to secure the attendance of the witness or expert witness.

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(12) Anything done by the person to be heard in the presence of the nominated court which, if it were done in proceedings before that court, would constitute a contempt of court is to be treated for that purpose as done in proceedings before that court.

(13) Any statement made on oath by the person to be heard under this section is to be treated for the purposes of sections 457 or 459 of the Crimes Act 2011 as made in proceedings before the nominated court.

(14) The Schedule to this Act has effect.

(15) Subject to subsections (12) and (13) and the provisions of the Schedule, evidence given in accordance with this section is not to be treated for any purpose as evidence given in proceedings in Gibraltar.

Hearing by videoconference – outgoing requests.

15.(1) Where-

- (a) there are criminal proceedings in Gibraltar;
- (b) a witness or an expert witness, as the case may be, is present in a contracting State; and
- (c) the attendance in person of that witness or expert witness before a court in Gibraltar is not possible or desirable,

a Competent Officer may apply to the court for it to issue a request to a contracting State for the hearing of that witness or expert witness by videoconference or other audiovisual transmission.

(2) If satisfied that the requirements in subsection (3) are met, and upon the application of a Competent Officer, a judge or justice of the peace may issue a request under this section to the competent authority in the contracting State for the hearing of a witness or expert witness by videoconference or other audiovisual transmission.

(3) The requirements referred to in subsection (2) are that-

- (a) the person named in the application has made a written statement consenting to hearing by videoconference or other audio visual transmission;
- (b) the execution of the request is not contrary to the fundamental principles of Gibraltar law.

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(4) If the judge or justice of the peace grants the application and makes the request to the competent authority in the contracting State, the Central Authority, or the Competent Officer when directed by the Central Authority, must communicate with the competent authority in the contracting State to agree the practical arrangements for the hearing and this includes-

- (a) summoning the witness or expert witness and setting out the time, the date and the venue at which the person is to appear for the hearing by videoconference or other audiovisual transmission; and
- (b) informing the witness or expert witness about their rights under Gibraltar law, within a reasonable time prior to the hearing to allow them to exercise their rights effectively.

(5) The following rules apply where the judge or justice of the peace grants a request under subsection (2), and a hearing is held by videoconference or other audiovisual transmission in the contracting State-

- (a) the competent authority in the contracting State must be present during the hearing, where necessary assisted by an interpreter, and must be responsible for ensuring the identity of the person to be heard and that the fundamental principles of law are respected;
- (b) where the competent authority in the contracting State is of the view that during the hearing the fundamental principles of law of the requested State are being infringed, they must immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;
- (c) measures for the protection of the person to be heard in accordance with the request must be agreed, where necessary, between the Central Authority and the competent authority in the contracting State;
- (d) at the request of the Central Authority or the person to be heard, the competent authority in the contracting State must ensure the person to be heard is assisted by an interpreter, if necessary;
- (e) in advance of the hearing, the person must be informed of the procedural rights which would accrue to them, including the right not to testify, under the law of the contracting State and under Gibraltar law; and
- (f) in advance of the hearing, witnesses or expert witnesses may claim the right not to testify which would accrue to them under the law of the contracting State or under Gibraltar law.

Regulations to amend this Part.

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16. The Government may by regulations make further provision for videoconferencing, and such regulations may amend this Part.

PART 6 PROTECTION OF WITNESSES

Protection of persons in Gibraltar.

17.(1) Without prejudice to any other provision under Gibraltar law, where a competent authority in a contracting State makes a request under this Act in relation to a witness and this witness is-

- (a) at risk of intimidation or in need of protection; and
- (b) present in Gibraltar,

the Central Authority, with the assistance of the Commissioner of Police, must endeavour to agree measures with the competent authority in the contracting State for the protection of the witness concerned.

(2) In subsection (1) and section 18(1)-

“witness” means any person, irrespective of their status under Gibraltar law, who possesses information relevant to criminal proceedings or criminal investigations, and this includes victims, experts, as well as interpreters;

“intimidation” means any direct, indirect or potential threat to a witness, which may lead to interference with their duty to give evidence free from any influence of any kind.

(3) For the purposes of a request under subsection (1), the Commissioner of Police may make any arrangements under this Act or under any other enactment to protect a person that falls under subsection (1).

(4) In determining whether to agree measures under subsection (1), or cancel any measures, the Central Authority and the Commissioner of Police must have regard to the circumstances and at all appropriate stages of the criminal investigation or criminal proceeding.

(5) The Commissioner of Police may vary or cancel any arrangements made by virtue of subsection (1) if it is considered appropriate to do so on the request of the witness or competent authority in the contracting State, or on its own initiative.

(6) Any arrangements made under subsections (1) or (2) must be recorded by the Commissioner of Police, together with any variation or cancellation of these arrangements.

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(7) Any arrangements that are made under this section must take into account the capabilities of the Central Authority and Commissioner of Police.

(8) The Central Authority may seek to recover from a contracting State, any costs or expenses borne by the Commissioner of Police or the Central Authority in making arrangements under subsection (1), if they are of an extraordinary nature.

Protection of persons in a requested State.

18.(1) Where the Central Authority makes request under this Act to a competent authority in a contracting State in respect of a witness, and this witness is-

- (a) at risk of intimidation or in need of protection; and
- (b) present in a requested State,

the Central Authority, with the assistance of the Commissioner of Police, must request measures from the competent authority in the contracting State for the protection of the witness concerned.

(2) Where appropriate, the Central Authority, with the Commissioner of Police may request that any measures made by the competent authority in the contracting State be cancelled or varied.

PART 7 OTHER FORMS OF ASSISTANCE

Exchange of information.

19.(1) Subject to subsection (4), and upon receipt of a request by the Commissioner of Police from a competent authority in a contracting State, the Commissioner of Police, or any designated person or persons, may disclose to that competent authority in the contracting State any information which may arise in relation to a relevant offence and which may-

- (a) assist that contracting State in respect of a relevant offence; or
- (b) lead to a request under this Act by that State.

(2) The Commissioner of Police may send a request to a competent authority in a contracting State for any information which may arise in that State which may-

- (a) assist the Royal Gibraltar Police in respect of a relevant offence; or

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(b) lead to a request.

(3) For the purposes of subsection (1), the Central Authority may designate, by Notice in the Gazette, any other person or persons who may exchange of information under subsection (1).

(4) The Commissioner of Police or the designated person or persons may not disclose any information under this section, until the competent authority in the contracting State, which is to receive that information, agrees to comply with any restrictions and conditions on the use of that information as are imposed by the Commissioner of Police, or designated person or persons.

(5) Where the Commissioner of Police or designated person or persons are the recipients of information provided by a competent authority of a contracting State, they shall not be bound by any restrictions and conditions on the use of that information as is imposed by that competent authority, unless the Commissioner of Police or designated person or persons receive prior notice of the information to be provided and agree to those restrictions and conditions.

Publicly accessible information.

20.(1) A competent authority in a contracting State may send a request to the Central Authority for provision of any information from public records to which the public, or any section of the public has access, as of right or by virtue of an express permission, by payment or otherwise.

(2) The Central Authority may provide original copies, or where appropriate, certified copies of the information referred to in subsection (1) to the competent authority in the contracting State upon request.

(3) The Central Authority may send a request to a competent authority in a contracting State for provision of the same information as set out in subsection (1) and may request original copies of this information, or where appropriate, certified copies of the information.

(4) The Government may by regulations make further provision for requests under this section, and these regulations may amend this section.

Internal cooperation.

21.(1) Nothing in this Act precludes or prevents the exchange of information relating to a relevant offence between the Royal Gibraltar Police and the GFIU, HM Customs or with other supervisory bodies listed in Part 1 of Schedule 2 of the Proceeds of Crime Act 2015.

(2) Where the Royal Gibraltar Police exchanges information with any authority referred to in subsection (1), the Commissioner of Police may impose restrictions and conditions on the

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use of that information, and the recipient of the information must comply with those restrictions and conditions.

(3) Where the Royal Gibraltar Police is the recipient of information from any authority referred to in subsection (1), they must comply with any restrictions and conditions imposed on the use of that information by that authority.

Controlled delivery-incoming requests.

22.(1) For the purposes of this Act, “controlled delivery” means the technique of allowing a consignment or any article to pass out of, or through, or into the territory of one of more contracting States-

- (a) with the knowledge of and under the supervision of the competent authorities in the contracting States in which the consignment or article is to pass through or into;
 - (b) where it is reasonably believed that the consignment or any article contains illegal contents;
 - (c) with a view to identifying persons involved in the commission of a relevant offence whether in Gibraltar or elsewhere; and
 - (d) where there is a criminal investigation in connection with a relevant offence.
- (2) In subsection (1), “competent authorities in the contracting States” refers to-
- (a) any authority in a contracting State that is appointed or nominated under the law of that State to deal with controlled deliveries; or
 - (b) any authority recognised by the Government of that State, as the appropriate authority for dealing with controlled deliveries.
- (3) Subject to subsection (4) the Central Authority may authorise controlled deliveries in or through Gibraltar.
- (4) An authorisation under subsection (3) may only be given if there is a request from a competent authority in a contracting State to the Central Authority.
- (5) An authorisation under this section must-
- (a) be in writing;
 - (b) name the persons taking part in the controlled delivery operation;

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- (c) contain the restrictions and conditions as the Central Authority deems appropriate.
- (6) Where the Central Authority grants an authorisation under subsection (3), whoever is authorised by the Central Authority, whether it is the Commissioner of Police or the Collector of Customs, must in turn by written authority instruct their officers to allow the passage of a consignment or an article.
- (7) Where the Commissioner of Police or the Collector of Customs is acting under subsection (6), they must ensure that the next State of transit has been notified and accepts responsibility for the monitoring of the consignment or article, or if it is the State of destination of the consignment or article, that the State will undertake the necessary surveillance up to and including the delivery of the consignment or article.
- (8) In any criminal investigation where Gibraltar is the destination of a consignment or an article that is or is reasonably believed to contain illegal contents, where the Commissioner of Police or the Collector of Customs are acting under an authorisation from the Central Authority, they may by written authority instruct their officers to allow the delivery of the consignment or article.
- (9) Nothing in this section confers any rights on any law enforcement body which is not constituted under the laws of Gibraltar, and any operation, to the extent that it is carried out in Gibraltar, must remain under the exclusive command and control of the persons specified in the authorisation.

Outgoing requests- controlled delivery.

23. The Central Authority may send a request to a competent authority of a contracting State for a controlled delivery to be permitted on, or through, its territory in accordance with the procedures of the contracting State.

PART 8 DATA PROTECTION

Definitions.

24. In this Part-

“the Data Protection Convention” means the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data which was opened for signature on 28 January 1981, as amended from time to time;

“the Gibraltar GDPR” has the same meaning as in section 2 of the Data Protection Act 2004;

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“personal data” has the same meaning as in section 2 of the Data Protection Act 2004.

Refusal to transmit.

25.(1) No personal data may be transmitted or sent as part of the execution of a request from a contracting State where-

- (a) the personal data to which the request relates is protected from disclosure under Gibraltar law; and
- (b) subject to subsection (2), the contracting State making the request for the transfer of personal data from Gibraltar is not a party to nor has extension of the Data Protection Convention.

(2) The transfer of personal data to the contracting State referred to in subsection (1) (b) may occur where the data controller in Gibraltar that holds the personal data is satisfied that-

- (a) the contracting State imposes requirements in its legislation that are equivalent to the Data Protection Act 2004 or the Gibraltar GDPR;
- (b) the competent authority in the contracting State receiving the personal data is subject to equivalent duties of professional confidentiality and protection of personal data under the Data Protection Act 2004 or the Gibraltar GDPR; and
- (c) that the contracting State agrees to comply with any restrictions or limitations placed by the data controller in Gibraltar on the use of the personal data.

PART 9 JURISDICTION AND AMENDMENT

Amendment of the Proceeds of Crime Act 2015.

26. After section 5 of the Proceeds of Crime Act 2015, insert-

- “5A. A court in Gibraltar shall have jurisdiction to hear any matter to which sections 2 to 5 of this Act applies, where the offence was committed wholly or partly on board a vessel that is registered under the laws of Gibraltar at the time the offence was committed.”.

Amendment of the Crimes Act 2011.

27. After section 577 of the Crimes Act 2011, insert-

- “**Offences on Gibraltar registered vessels.**

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577A. Except for offences under sections 2 to 5 of the Proceeds of Crime Act 2015, for which separate provision is made under that Act, a court in Gibraltar shall have jurisdiction to hear any other matter which would constitute a relevant offence as defined in section 7 of the Mutual Legal Assistance (Merida Convention) Act 2022, where that offence was committed wholly or partly on board a vessel that is registered under the laws of Gibraltar at the time the relevant offence was committed.”.

PART 10 MISCELLANEOUS

Costs.

28.(1) The ordinary costs and expenses of executing a request in Gibraltar under Parts 5 to 6 of this Act, unless otherwise agreed with the other contracting State or unless otherwise provided under this Act, are to be borne by the Government of Gibraltar.

(2) If costs and expenses of an extraordinary nature are or will be required to fulfil the request, the Central Authority must consult the contracting State to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

Rules of court.

29.(1) The Chief Justice may make provision by rules of court as to the practice and procedure to be followed in connection with proceedings under this Act.

(2) The power to make rules under this section does not prejudice any power to make rules under any other enactment.

Power to make regulations.

30.(1) The Government may, by regulations-

- (a) amend the Schedule to this Act;
- (b) make provision in respect of any matter that arises from or is incidental to this Act, or for the implementation of the Convention or any other relevant international obligation;
- (c) amend this Act for the purpose of implementing-
 - (i) an international agreement or convention extended to Gibraltar; or

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- (ii) any international obligations or standards concerned with the Convention or any international agreement or convention; or
- (iii) the recommendations (however described) of international bodies that are involved with the adoption, monitoring or promotion of such obligations and standards.

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

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

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SCHEDULE

(Section 14)

PROCEEDINGS OF A NOMINATED COURT UNDER SECTION 14

**EVIDENCE GIVEN BY VIDEOCONFERENCE OR OTHER AUDIOVISUAL
TRANSMISSION**

Securing attendance of witness.

1. The nominated court has the same powers for securing the attendance of a witness to give evidence through videoconference or other audiovisual transmission as it has for the purposes of other proceedings before that court.

Privilege of witness.

2.(1) The witness cannot be compelled to give any evidence which that person cannot be compelled to give in criminal proceedings before the nominated court.

(2) The witness cannot be compelled to give any evidence if in doing so would be prejudicial to the security of Gibraltar.

(3) A certificate signed by or on behalf of the Governor to the effect that it would be prejudicial for that witness to give evidence is conclusive evidence of that fact.

(4) A person cannot be compelled to give any evidence in their capacity as an officer or servant of the Crown.

(5) Subsections (2) and (4) are without prejudice to the generality of subsection (1).

Record of hearing.

3. Rules of court under section 29 must make provision-

(a) for the drawing up of a record of the hearing;

(b) for sending the record to the competent authority of the contracting State.