

Subsidiary Legislation made under s. 697.

**MUTUAL RECOGNITION OF FINANCIAL PENALTIES  
REGULATIONS 2014**

**(LN. 2014/229)**

*Commencement*      **1.12.2014**

Amending enactments	Relevant current provisions	Commencement date
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**Transposing:**

Framework Decision 2005/214/JHA

Council Framework Decision 2009/299/JHA

**EU Legislation/International Agreements involved:**

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**2011-24**

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## MUTUAL RECOGNITION OF FINANCIAL PENALTIES REGULATIONS 2014

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*In exercise of the powers conferred upon him by section 697 of the Criminal Procedure and Evidence Act 2011, and for the purposes of transposing, the Framework Decision of the Council of the European Union made on 24 February 2005 on the application of the principle of mutual recognition to financial penalties (2005/214/JHA), the Minister has made the following Regulations—*

### **Title and commencement.**

1. These regulations may be cited as the Mutual Recognition of Financial Penalties Regulations, 2014 and shall come into operation on 1 December 2014.

### **Interpretation.**

2.(1) In these regulations—

“central authority”, in relation to a Member State, means an authority designated by the State as a central authority for the purposes of the Framework Decision on financial penalties;

“Central Authority in Gibraltar” shall be construed in accordance with regulation 3;

“competent authority”, in relation to a Member State, means an authority designated by the State as a competent authority for the purposes of that Decision;

“executing State” means the State to which a decision has been transmitted for the purpose of enforcement;

“the Framework Decision on financial penalties” means the Framework Decision of the Council of the European Union made on 24 February 2005 on the application of the principle of mutual recognition to financial penalties (2005/214/JHA) as amended from time to time;

“issuing State” means the State in which a decision within the meaning of the Framework Decision on financial penalties was delivered;

“Member State” means a Member State of the European Union to which the Framework Decision on financial penalties applies; and

“Minister” means the Minister with responsibility for Justice.

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(2) References in these regulations to a certificate requesting enforcement under the Framework Decision on financial penalties are references to such a certificate as is provided for by article 4 of that Decision.

**Central authority.**

3. The Central Authority in Gibraltar for the purposes of these regulations shall be the Chief Secretary or such other person as the Minister may appoint by notice in published the Gazette.

**PART II  
RECOGNITION OF FINANCIAL PENALTIES:  
OUTGOING REQUESTS**

**Outgoing requests.**

4.(1) A designated officer may issue a certificate requesting enforcement under the Framework Decision on financial penalties where—

- (a) a person is required to pay a financial penalty,
- (b) the penalty is not paid in full within the time allowed for payment,
- (c) there is no appeal outstanding in relation to the penalty, and
- (d) it appears to the designated officer that the person is normally resident in, or has property or income in, a Member State.

(2) For the purposes of subregulation (1)(c), there is no appeal outstanding in relation to a financial penalty if—

- (a) no appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal, or
- (b) such an appeal has been brought but the proceedings on appeal have been concluded.

(3) Where the person required to pay the financial penalty is a body corporate, subregulation (1)(d) applies as if the reference to the person being normally resident in a Member State were a reference to the person having its registered office in a Member State.

(4) In this regulation “financial penalty” means—

- (a) a fine imposed by a court in Gibraltar on a person's conviction of an offence;
- (b) any sum payable under a compensation order (as defined in section 2 of the Criminal Procedure and Evidence Act 2011) in circumstances made in accordance with article 1(b)(ii) of the Framework Decision on Financial Penalties;
- (c) any sum payable under an order for costs made under Part 24 of the Criminal Procedure and Evidence Act 2011;
- (d) any sum payable by virtue of section 577 of the Criminal Procedure and Evidence Act 2011 (orders requiring parents to pay fines etc);
- (e) any other financial penalty, within the meaning of the Framework Decision on financial penalties, specified in an order made by the Minister.

(5) For the purposes of this regulation the following are designated officers—

- (a) the Registrar of the Supreme Court;
- (b) the Clerk to the Justices;
- (c) such other person designated by the Minister for the purposes of this regulation.

(6) Designated officers are, in accordance with the Framework Decision on financial penalties, competent authorities for the purposes of issuing a certificate requesting enforcement under the Framework Decision and for the purposes of regulation 5.

## **Procedure on issue of certificate**

5.(1) This regulation applies where a designated officer has issued a certificate under regulation 4(1) and given the certificate and the document mentioned in subregulation (3)(b) to the Central Authority in Gibraltar.

(2) The Central Authority in Gibraltar must transmit the documents mentioned in subregulation (3) to the central authority or competent authority of the Member State in which the person required to pay the penalty appears to be normally resident or (as the case may be) to have

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property or income in accordance with article 4.3 of the Framework Decision on financial penalties.

- (3) The documents are–
- (a) the certificate, signed by the designated officer and certified by him as accurate;
  - (b) a certified copy of the decision requiring payment of the financial penalty.

(4) Subject to subregulations (5) and (6), where a certified copy of the decision is given to the central authority or competent authority of a Member State in accordance with subregulation (2)–

- (a) no further steps to enforce the decision may be taken in Gibraltar;
- (b) the decision may not be transmitted to another Member State.

(5) This subregulation applies where the Central Authority in Gibraltar, further to an application by a designated person or of its own volition, has informed the relevant central authority or competent authority of the Member State to which it has transmitted that a particular request for enforcement, sent from Gibraltar in accordance with the Framework Decision on financial penalties, is withdrawn or has ceased to be enforceable.

(6) A competent authority in Gibraltar may accept a voluntary payment from a person required to pay a financial penalty in respect of which a request for enforcement has been transmitted to a central authority or competent authority of a Member State in satisfaction or part satisfaction of such financial penalty. The competent authority shall without delay inform the Central Authority in Gibraltar of any voluntary payment received in accordance with this subregulation.

(7) Where the person required to pay the financial penalty is a body corporate, subregulation (2) applies as if the reference to the Member State in which the person appears to be normally resident were a reference to the Member State in which the person appears to have its registered office.

**PART III****Recognition of financial penalties: Requests received in Gibraltar.****Part III: Interpretation and general provisions.**

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6.(1) In this Part and Schedules 1 and 2–

“decision” has the meaning given by article 1 of the Framework Decision on financial penalties (except in regulations 8(4) and (6));

“financial penalty” has the meaning given by that by article 1 of the Framework Decision on financial penalties.

(2) Schedule 1 specifies when a financial penalty is suitable for enforcement in Gibraltar for the purposes of regulation 7(1).

(3) Schedule 2 specifies the grounds for refusal for the purposes of regulations 7(3)(a) and 8(3).

(4) For the purposes of this Part the following are competent authorities in Gibraltar–

- (a) the Clerk to the Justices;
- (b) such other person designated by the Minister for the purposes of this Part.

**Requests received in Gibraltar.**

7.(1) This regulation applies where–

- (a) the Central Authority in Gibraltar receives from a competent authority or central authority of a Member State–
  - (i) a certificate requesting enforcement under the Framework Decision on financial penalties, and
  - (ii) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and
- (b) the financial penalty is suitable for enforcement in Gibraltar in accordance with regulation 6(2).

(2) If the certificate states that the person required to pay the financial penalty is normally resident in Gibraltar, the Central Authority in Gibraltar must give the documents mentioned in subregulation (1)(a) to a competent authority in Gibraltar.

(3) Where the Central Authority in Gibraltar acts under subregulation (2) he must also give the competent authority in Gibraltar a notice–

- (a) stating whether the Central Authority in Gibraltar is of the opinion that any of the grounds for refusal apply in accordance with regulation 6(3), and
- (b) giving reasons for that opinion.

**Procedure on receipt of certificate by competent authority.**

8.(1) This regulation applies where the Central Authority in Gibraltar gives a competent authority in Gibraltar–

- (a) a certificate requesting enforcement under the Framework Decision on financial penalties,
- (b) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and
- (c) a notice under regulation 7(3).

(2) The competent authority in Gibraltar must refer the matter to the Magistrates' Court.

(3) The Magistrates' Court must decide whether it is satisfied that any of the grounds for refusal apply (see regulation 6(3)).

(4) The competent authority in Gibraltar must inform the Central Authority in Gibraltar of the decision of the Magistrates' court.

(5) Subregulation (6) applies unless the Magistrates' court is satisfied that one or more of the grounds for refusal apply.

(6) Subject to subregulations (7) to (11), the provisions of the Criminal Procedure and Evidence Act 2011 apply in relation to the financial penalty as if it were a sum adjudged to be paid by a conviction of the Magistrates' court on the date when the court made the decision mentioned in subregulation (4).

(7) If–

- (a) the certificate requesting enforcement under the Framework Decision on financial penalties states,
- (b) the sentenced person is able to furnish proof so as to satisfy the Magistrates' Court that a payment, totally or in part, in any



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State has been made in respect of the financial penalty to which the decision relates, or

- (c) the Magistrates' Court is informed that the Central Authority in Gibraltar has received information in accordance with article 15(3) of the Framework Decision on financial penalties that the sentenced person has made a voluntary payment with respect to the financial penalty,

the reference in subregulation (6) to the financial penalty is to be read as a reference to such part of the penalty as remains unpaid.

(8) The Magistrates' Court may, where the acts relating to a decision were not carried out in the territory of the issuing State and fall under the jurisdiction of the law of Gibraltar, reduce the financial penalty to be enforced in the decision to the maximum amount provided for under the law of Gibraltar for acts of that kind.

(9) The Magistrates' Court may convert the financial penalty imposed by the issuing State into pounds sterling at the prevailing rate of exchange on the date when the financial penalty was imposed.

(10) The Magistrates' Court may not impose an alternative sanction in respect of a decision received under this section unless—

- (a) the law of Gibraltar allows for alternative sanctions for the acts that constitute the offence; and
- (b) the issuing State provided for the application of alternate sanctions in the certificate.

Provided that the Magistrates' Court in determining the severity of the alternative sanction may not exceed a maximum level stated in the certificate transmitted with the decision by the issuing State.

(11) The application of sums recovered by the Magistrates' Court in relation to the enforcement of a decision under the Framework Decision on financial penalties is subject to any agreement between the issuing State and Gibraltar on such matters. Where there is no such agreement the sums must be paid into the Consolidated Fund.

(12) Where the Magistrates' Court is of the opinion that paragraph 1, 7, 9, or 10 of Schedule 2 applies to a request referred to it under subregulation (2) it shall, before deciding not to recognise or execute the decision, consult the relevant competent authority in the issuing state and request any necessary further information from it.

**Termination of enforcement.**

9. The Magistrates' Court shall terminate the enforcement of a request for enforcement under the Framework Decision on financial penalties on being informed by the Central Authority in Gibraltar—

- (a) that the issuing State has stated—
  - (i) that such decision has ceased to be enforceable or is withdrawn; or
  - (ii) that such decision is covered by an amnesty or pardon in the issuing State, or
- (b) that such decision is covered by an amnesty or pardon in Gibraltar.

**PART IV  
Miscellaneous**

**Supply of information.**

10.(1) The Magistrates' Court shall without delay inform the competent authority of the issuing state in writing—

- (a) of any decision not to recognise and execute a decision according to regulation 8(3) together with the reasons for the decision;
  - (c) of the total or partial non-execution of the decision for the reasons referred to in regulation 8(7), 8(8) or 9;
  - (d) of the execution of the decision as soon as the execution has been completed;
  - (e) of the application of an alternative sanction, according to regulation 8(10).
- (2) Where—
- (a) the Central Authority in Gibraltar has, for the purpose of enforcement, transmitted a decision to an executing State; and

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- (b) the Central Authority in Gibraltar is informed that the person required to pay the financial penalty has voluntarily paid a sum in Gibraltar towards such financial penalty,

the Central Authority in Gibraltar shall, without delay, inform the competent authority in the executing state of such payment.

(3) Where a body in Gibraltar receives a request for the enforcement of a decision other than from the Central Authority in Gibraltar such body shall without delay—

- (a) transmit the decision to the Central Authority in Gibraltar; and
- (b) inform the issuing State in writing of the transmission of the decision to the Central Authority in Gibraltar.

**Costs.**

11.(1) Costs, including but not limited to any costs incurred by the Central Authority in Gibraltar to obtain a translation of a request received in Gibraltar in accordance with the Framework Decision on Financial Penalties, shall not be claimed from the issuing State.

(2) The Magistrates' Court must bear the costs of translating a decision received from an issuing State into English and may suspend enforcement of the decision until the translation is complete.

SCHEDULE 1

Regulation 6(2)

**Penalties Suitable for Enforcement in Gibraltar**

**Person residing in Gibraltar**

1. The financial penalty is suitable for enforcement in Gibraltar if the certificate states that the person required to pay the penalty is normally resident in Gibraltar.

**Person having property etc in Gibraltar**

2. The financial penalty is suitable for enforcement in Gibraltar if—
- (a) the certificate states that the person required to pay the penalty has property or a source of income in Gibraltar, and
  - (b) the certificate does not state that the person is normally resident in Gibraltar.

**Interpretation**

3. Where the person required to pay the financial penalty is a body corporate, this Schedule applies as if the reference in paragraph 1 to the person being normally resident in Gibraltar were a reference to the person having its registered office in Gibraltar.

SCHEDULE 2

Regulation 6(3)

**Grounds for Refusal to Enforce Financial Penalties**

1. The certificate provided for in article 4 of the Framework Decision on financial penalties is not produced is incomplete or manifestly does not correspond to the decision.
2. A penalty (of any kind) has been imposed on the liable person in respect of the conduct to which the certificate relates under the law of Gibraltar (whether or not the penalty has been enforced).
3. A penalty (of any kind) has been imposed on the liable person in respect of that conduct under the law of any Member State and the issuing State, and that penalty has been enforced.
4. The decision was made in respect of conduct that is not specified in Schedule 3 and which would not constitute an offence under the law of Gibraltar if it occurred in Gibraltar.
5. The decision was made in respect of conduct—
  - (a) that occurred outside the territory of the issuing State, and
  - (b) would not constitute an offence under the law of the Gibraltar if it occurred outside Gibraltar.
6. The decision was made in respect of conduct by a person who was under the age of criminal responsibility as set by section 3 of the Crimes Act 2011 when the conduct took place.
7. The certificate provided for in article 4 of the Framework Decision on financial penalties does not confirm that—
  - (a) if the proceedings in which the decision was made were conducted in writing, the liable person was informed of the right to contest the proceedings and of the time limits that applied to the exercise of that right;
  - (b) if those proceedings provided for a hearing to take place and the liable person did not attend, the liable person was informed of the proceedings or indicated an intention not to contest them.

8. The financial penalty is for an amount less than 70 euros or the equivalent to that amount.

9. According to the certificate provided for in article 4 of the Framework Decision on financial penalties, the liable person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State—

- (a) in due time either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial; or
- (b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial; or
- (c) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed: expressly stated that he or she does not contest the decision, or did not request a retrial or appeal within the applicable time frame;

10. According to the certificate provided for in article 4 of the Framework Decision on financial penalties, the person did not appear in person, unless the certificate states that the person, having been expressly informed about the proceedings and the possibility to appear in person in a trial, expressly waived his or her right to an oral hearing and has expressly indicated that he or she does not contest the case.

## SCHEDULE 3

Schedule 2 Paragraph 4

- Participation in a criminal organisation.
- Terrorism.
- Trafficking in human beings.
- Sexual exploitation of children and child pornography.
- Illicit trafficking in narcotic drugs and psychotropic substances.
- Illicit trafficking in weapons, munitions and explosives.
- Corruption.
- Fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Union financial interests.
- Laundering of the proceeds of crime.
- Counterfeiting currency, including of the euro.
- Computer-related crime.
- Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties.
- Facilitation of unauthorised entry and residence.
- Murder, grievous bodily injury.
- Illicit trade in human organs and tissue.
- Kidnapping, illegal restraint and hostage-taking.
- Racism and xenophobia.
- Organised or armed robbery.
- Illicit trafficking in cultural goods, including antiques and works of art.
- Swindling.
- Racketeering and extortion.
- Counterfeiting and piracy of products.
- Forgery of administrative documents and trafficking therein.
- Forgery of means of payment.
- Illicit trafficking in hormonal substances and other growth promoters.
- Illicit trafficking in nuclear or radioactive materials.
- Trafficking in stolen vehicles.
- Rape.
- Arson.
- Crimes within the jurisdiction of the International Criminal Court.
- Unlawful seizure of aircraft or ships.
- Sabotage.
- Conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods.

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- Smuggling of goods.
- Infringement of intellectual property rights.
- Threats and acts of violence against persons, including violence during sport events.
- Criminal damage.
- Theft.
- Offences created by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the Treaty establishing the European Community or Title VI of the Treaty on European Union.

**Interpretation**

In this Schedule—

- (a) “conduct” includes any act or omission;
- (b) “liable person” means the person required to pay the financial penalty to which the certificate relates.

If the decision was made in respect of conduct by a person other than the liable person, the references to the liable person are to be read as references to that other person.