

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 4129 of 1 December, 2014**

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LEGAL NOTICE NO. 230 OF 2014.

**INTERPRETATION AND GENERAL CLAUSES ACT**

**CRIMINAL PROCEDURE AND EVIDENCE (AMENDMENT)  
(PREVIOUS CONVICTIONS) REGULATIONS 2014**

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act and all other enabling powers and in order to transpose Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of criminal proceedings, the Government has made the following Regulations—

**Title and commencement.**

1. These Regulations may be cited as the Criminal Procedure and Evidence (Amendment) (Previous Convictions) Regulations 2014 and come into operation on the 1<sup>st</sup> December 2014.

**Amendment of the Criminal Procedure and Evidence Act 2011.**

2.(1) The Criminal Procedure and Evidence Act 2011 is amended in accordance with this regulation.

(2) In section 144 (decision as to allocation) after subsection (4) insert—

“(4A) In this section any reference to a previous conviction is a reference to—

- (a) a previous conviction by a court in Gibraltar; or
- (b) a previous conviction outside Gibraltar by a court in a Member State of the European Union of a relevant offence under the law of that State.

(4B) For the purposes of subsection (4A)(b) an offence is “relevant” if the offence would constitute an offence under the law

of Gibraltar if it were done at the time when the allocation decision is made.”.

(3) In section 211 (decision on whether summary trial or trial on indictment more suitable) for subsection (5) substitute—

“(5) In this section any reference to a previous conviction is a reference to—

- (a) a previous conviction by a court in Gibraltar; or
- (b) a previous conviction outside Gibraltar by a court in a Member State of the European Union of a relevant offence under the law of that State.

(6) For the purposes of subsection (5)(b) an offence is “relevant” if the offence would constitute an offence under the law of Gibraltar if it were done at the time when the decision required by section 209(7) or 210(2)(d) is made.”.

(4) In section 351 (conviction as evidence of commission of offence) in subsection (3) after “any court in Gibraltar” insert “or in a Member State of the European Union outside Gibraltar”.

(5) In section 352 (proof of convictions and acquittals in Gibraltar)—

- (a) for the section heading substitute “Proof of convictions and acquittal in Gibraltar and in Member States of the European Union”;
- (b) in subsection (1) after “in Gibraltar” insert “or in a Member State of the European Union outside Gibraltar”;
- (c) in subsection (4) for paragraph (b) substitute—

“(b) in relation to any other court in Gibraltar- the clerk of the court, his deputy or any other person having custody of the court record;

(c) in relation to any court in a Member State of the European Union outside Gibraltar, a person who would be the proper officer of that court if it were in Gibraltar.”.

(6) In section 371 (matter in issue between the defendant and the prosecution) after subsection (5) insert–

“(6) Where–

- (a) a defendant has been convicted of an offence outside Gibraltar under the law of a Member State of the European Union (“the previous offence”), and
- (b) the previous offence would constitute an offence under the law of Gibraltar (“the corresponding offence”) if it were done in Gibraltar at the time of the trial for the offence with which the defendant is now charged (“the current offence”),

subsection (7) applies for the purpose of determining if the previous offence and the current offence are of the same description or category.

(7) For the purposes of subsection (2)–

- (a) the previous offence is of the same description as the current offence if the corresponding offence is of that same description, as set out in subsection (4)(a);
- (b) the previous offence is of the same category as the current offence if the current offence and the corresponding offence belong to the same category of offences as set out in Schedule 8.”.

(7) In section 376 (offences committed by defendant when a child) after subsection (1) insert–

“(1A) Subsection (1B) applies where–

- (a) the defendant has been convicted of an offence outside Gibraltar under the law of a Member State of the European Union (“the previous offence”), and
- (b) the previous offence would constitute an offence under the law of Gibraltar (“the corresponding offence”) if it were done in Gibraltar at the time of

the trial for the offence with which the defendant is now charged (“the current offence”).

(1B) For the purposes of subsection (1)(a) the previous offence is to be regarded as triable only on indictment if the corresponding offence is so triable.”.

(8) In section 480 (determining the seriousness of an offence) for subsections (4) and (5) substitute-

“(4) Any reference to a previous conviction in subsection (2) is a reference to-

- (a) a previous conviction by a court in Gibraltar; or
- (b) a previous conviction outside Gibraltar by a court in a Member State of the European Union of a relevant offence under the law of that State.

(4A) For the purposes of subsection (4)(b) an offence is “relevant” if the offence would constitute an offence under the law of Gibraltar if it were done at the time when the consideration in accordance with this section takes place.

(5) Subsections (2), (4) and (4A) do not prevent the court from treating a previous conviction by-

- (a) a court outside Gibraltar, or
- (b) a court outside Gibraltar in a Member State of the European Union of an offence which is not a relevant offence,

as an aggravating factor in any case where the court considers it appropriate to do so.”.

Dated 1st December, 2014.

G H LICUDI Q.C.,

Minister responsible for Justice,  
For the Government.