

Subsidiary Legislation made under s.697.

Transfer of Sentenced Persons (European Union) Regulations 2014

LN.2014/227

Commencement **1.12.2014**

Transposing:

Council Framework Decision 2008/909/JHA

Council Framework Decision 2009/299/JHA

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NOTIFICATION OF THE SENTENCED PERSON**

In exercise of the powers conferred upon him by section 697 of the Criminal Procedure and Evidence Act 2011 and all other enabling powers, and in order to transpose Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, the Minister has made the following Regulations–

Title and commencement.

1. These Regulations may be cited as the Transfer of Sentenced Persons (European Union) Regulations 2014 and come into operation on 1 December 2014.

Interpretation.

2.(1) In these Regulations–

“authority” means the authority designated for recognising and enforcing a judgment or issuing a judgment in the European Union;

“European Judicial Network” means the network of judicial contact points set up by Council Joint Action 98/428/JHA;

“executing State” means the Member State to which a judgment is forwarded for the purpose of its recognition and enforcement;

“Framework Decision” means Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as the same may be amended from time to time;

“Framework Decision 2002/584/JHA” means Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), as the same may be amended from time to time;

“issuing State” means the Member State in which a judgment is delivered;

“judgment” means a final decision or order of a court of the issuing State imposing a sentence on a natural person;

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“sentence” means any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings; and

“sentenced person” means a person who has had a judgment imposed on him by an authority.

(2) For the purpose of these Regulations, and where the context so requires, where a judgment is forwarded to Gibraltar for the purpose of its recognition and enforcement, Gibraltar shall be treated as the “executing State” and where a judgment is delivered in Gibraltar, Gibraltar shall be treated as the “issuing State”.

Authority.

3. The authority for the purposes of implementing the Framework Decision in Gibraltar shall be the Chief Secretary.

Scope.

4.(1) These Regulations shall apply to a sentenced person where the person is located in the executing State or issuing State.

(2) A fine or confiscation order imposed at the same time as a sentence shall not prevent a judgment from being forwarded, even if unpaid, unrecovered or unenforced.

Outgoing Requests

Criteria for forwarding a judgment and a certificate.

5.(1) The Chief Secretary may, where a sentenced person is in Gibraltar or in the issuing State, and provided the person has given his consent where required under regulation 7, forward a judgment, together with the certificate for which the standard form is given in Schedule 2, to one of the following Member States—

- (a) the Member State of nationality of the sentenced person in which he lives;
- (b) the Member State of nationality, to which, while not being the Member State where he lives, the sentenced person will be deported, once he is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment; or

(c) any Member State other than a Member State referred to in (a) or (b), the authority of which consents to the forwarding of the judgment and the certificate to that Member State.

(2) The forwarding of the judgment and the certificate may take place where the Chief Secretary, where appropriate and after consultation with the executing authority, is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person.

(3) Before forwarding the judgment and the certificate, the Chief Secretary—

(a) may, for the cases referred to in paragraphs (1)(a) and (1)(b) consult, by any appropriate means, the authority of the executing State; and

(b) must, for the cases referred to in paragraph (1)(c), consult the authority of the executing State.

(4) Where during the consultation referred to in subregulation (3), the authority of the executing State presents the Chief Secretary with a reasoned opinion stating enforcement of the sentence in the executing State would not serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into society, the Chief Secretary shall consider such opinion and may withdraw the certificate.

(5) Where, following the forwarding of a judgment and certificate by the Chief Secretary without consultation to the executing State, the Chief Secretary receives a reasoned opinion stating enforcement of the sentence in the executing State would not serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into society, the Chief Secretary shall consider such opinion and may withdraw the certificate.

(6) The Chief Secretary may forward a judgment and a certificate—

(a) on his own initiative;

(b) following a request from an executing State; or

(c) following a request from the sentenced person, to either the Chief Secretary or the executing State to initiate a procedure for forwarding the judgment and the certificate under the Framework Decision.

(7) The Minister may make regulations, in particular for taking into account the purpose of facilitating social rehabilitation of the sentenced person, constituting the basis on which the

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competent authorities make their decision on consenting to forwarding the judgment and certificate in cases pursuant to subregulation 5 (1)(c).

Forwarding the judgment and certificate.

6.(1) A judgment or a certified copy of it, together with the certificate, shall be forwarded by the Chief Secretary to the executing State by a means which produces a written record under conditions allowing the executing State to establish its authenticity.

(2) Where the executing authority requests the original judgment or certificate, the Chief Secretary shall send the executing authority the judgment, or a certified copy of it, and the original of the certificate.

(3) The certificate, the standard form of which is contained in Schedule 2, shall be signed and its content certified as accurate by the Chief Secretary.

(4) The Chief Secretary shall forward the judgment together with the accompanying certificate to only one executing State at any one time.

(5) Where the authority in the executing State is not known to the Chief Secretary, he shall make all necessary enquiries, including using the contact points of the European Judicial Network in order to obtain the information from the executing authority.

Opinion and notification of the sentenced person.

7.(1) Subject to subregulation (2), a judgment together with a certificate may be forwarded to the executing State for the purpose of its recognition and enforcement of the sentence only with the consent of the sentenced person in accordance with Gibraltar law.

(2) The consent of a sentenced person, as referred to in subregulation (1), shall not be required where the judgment together with the certificate is forwarded—

- (a) to the Member State of nationality in which the sentenced person lives;
- (b) to the Member State to which the sentenced person will be deported once he is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure consequential to the judgment;
- (c) to the Member State to which the sentenced person has fled or otherwise returned in view of the criminal proceedings pending against him in Gibraltar or following the conviction in Gibraltar.

(3) Where the sentenced person is in Gibraltar he shall be given an opportunity to state his opinion orally or in writing.

(4) The sentenced person's opinion may be given by his legal representative where the person is unable to do so due to his age or his physical or mental condition.

(5) Where a sentenced person gives his opinion orally, the Chief Secretary shall ensure a written record of his statement is available to the executing State.

(6) Where the sentenced person has given his opinion under subregulation (3) or (4), the opinion of the sentenced person shall—

- (a) be taken into account when deciding the issue of forwarding the judgment together with the certificate; and
- (b) be forwarded to the executing State (in particular with a view to article 4(4) of the Framework Decision).

(7) The Chief Secretary shall inform the sentenced person, in a language which that person understands, that he has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Schedule 3.

(8) When the sentenced person is in the executing State at the time of the Chief Secretary's decision, the standard form in Schedule 3 shall be transmitted to the executing State in order for the executing State to inform the sentenced person.

(9) Subregulation (2)(a) shall not apply to Poland in cases where the sentence was issued before 5 December 2016 or until Poland notifies the General Secretariat of the Council that it will no longer avail itself of its derogation under article 6(5) of the Framework Decision.

Supply of additional information.

8. Where the Chief Secretary is asked by an executing State to supply necessary additional information in order for the executing authority to make a decision as to whether recognise and enforce a request made under regulation 6, the Chief Secretary shall reply with the necessary additional information without delay, in order for the executing authority to be able to make its decision.

Issue of warrant for transfer of person out of Gibraltar.

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9.(1) The Chief Secretary may issue a warrant for the transfer of a sentenced person to an executing State where he is informed by the executing State that it will recognise and enforce the judgment and the certificate sent by the Chief Secretary under regulation 6 relating to the sentenced person.

(2) A warrant issued under subregulation (1) shall authorise—

(a) the taking of the sentenced person to a place in any part of Gibraltar and his delivery at a place of departure from Gibraltar into the custody of a person authorised by the executing State to receive the person, for conveyance to the executing State concerned, and the keeping of the person in custody until the delivery is effected; and

(b) the removal of the sentenced person, by the person to whom he is so delivered, from Gibraltar.

(3) Where a warrant has been issued in respect of a sentenced person under this regulation, the person shall be deemed to be in legal custody at any time when he is being taken under the warrant to or from any place or being kept in custody under the warrant and, if the person escapes or is unlawfully at large, he shall be liable to be retaken in the same manner as any person who escapes from lawful custody.

(4) The order by virtue of which a sentenced person is required to be detained at the time a warrant is issued in respect of him under this regulation shall continue to have effect after his removal from Gibraltar so as to apply to him if he is again in Gibraltar at any time when under that order he is to be or may be detained.

Transfer of a sentenced person out of Gibraltar.

10.(1) This regulation applies where the Chief Secretary receives a notification that the executing State has taken a final decision and agrees to recognise a judgment and enforce a relevant sentence.

(2) A sentenced person must be transferred from Gibraltar to the executing State, at a time agreed by the Chief Secretary and the authority from the executing State, within 30 days of the authority of the executing State having taken a final decision on the recognition of the judgment and enforcement of the relevant sentence.

(3) Where in unforeseeable circumstances the transfer is prevented within the period provided for in subregulation (2) the Chief Secretary must immediately contact the authority of the executing State.

(4) Where subregulation (3) applies, the transfer provided for under subregulation (2) must occur as soon as the circumstances preventing the transfer cease to exist.

(5) Where the circumstances under subregulation (3) cease to exist, the Chief Secretary must immediately inform the authority of the executing State and agree a new transfer date.

(6) The Chief Secretary must transfer the sentenced person within 10 days of the transfer date referred to in subregulation (5).

Incoming Requests

Forwarding of judgment and certificate.

11. Where an authority in Gibraltar, other than the Chief Secretary, receives a judgment together with a certificate, it shall forward the judgment together with the certificate to the Chief Secretary and that authority shall inform the issuing State accordingly.

Recognition of a judgment and enforcement of a sentence.

12.(1) Consultation, prior to forwarding the judgment and certificate to Gibraltar pursuant to article 4 of the Framework Decision, shall be undertaken with the Chief Secretary, and in such a case the Chief Secretary shall promptly inform the authority of the issuing State whether or not consent is given to the forwarding of that judgment.

(2) Where prior consultation is not required under article 4 of the Framework Decision, or where after the consultation referred to in subregulation (1) consent has been given, the Chief Secretary shall apply to the Supreme Court for the recognition and enforcement of the judgment and shall promptly inform the issuing State of the outcome of that application.

(3) On an application to it under subregulation (2) the Supreme Court may refuse to recognise the judgment and enforce the sentence under one of the grounds for non-recognition or non-enforcement provided for in regulation 13.

(4) The Supreme Court may amend the duration of a sentence contained in a judgment and relevant certificate if the sentence is incompatible with the duration of a sentence, in that it exceeds the maximum penalty provided for a similar offence under Gibraltar law.

(5) The Supreme Court may not under subregulation (3) amend the duration of a sentence to a lesser period than the maximum provided for under Gibraltar law.

(6) The Supreme Court may amend the nature of the sentence contained in a judgment and the relevant certificate if the sentence is incompatible with the nature of a sentence, in that it

does not corresponded with a punishment or measure, for a similar offence under Gibraltar law.

(7) The Supreme Court must, in amending the nature of a sentence under subregulation (5), ensure that the amended sentence corresponds as closely as possible to the sentence imposed in the issuing State and must not convert the sentence into a pecuniary measure.

(8) A sentence amended by the Supreme Court under subregulation (3) or (5) must not aggravate the duration or nature of the sentence passed in the issuing State.

Grounds for non-recognition and non-enforcement.

13.(1) The Supreme Court may refuse to recognise the judgment and enforce the sentence and the related certificate received from an issuing authority if–

- (a) the certificate referred to in article 4 of the Framework Decision is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a reasonable deadline set by the Supreme Court;
- (b) the criteria set forth in article 4(1) of the Framework Decision are not met;
- (c) enforcement of the sentence would be contrary to the principle of *ne bis in idem*;
- (d) the judgment relates to acts which would not constitute an offence under the law of Gibraltar or an offence as described in article 7(1) of the Framework Decision; however, in relation to taxes or duties, customs and exchange, execution of a judgment may not be refused on the ground that the law of Gibraltar does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;
- (e) the enforcement of the sentence is statute-barred according to the law of Gibraltar;
- (f) there is immunity under the law of Gibraltar, which makes it impossible to enforce the sentence;
- (g) the sentence has been imposed on a person who, under the law of Gibraltar, owing to his age, could not have been held criminally liable for the acts in respect of which the judgment was issued;
- (h) at the time the judgment was received by the Chief Secretary, less than six months of the sentence remain to be served;

- (i) according to the certificate provided for in article 4 of the Framework Decision, the 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-
 - (i) in due time-
 - (A) 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 was aware of the scheduled trial, and
 - (B) was informed that a decision may be handed down if he or she does not appear for the trial;
 - (ii) 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 at the trial, and was indeed defended by that counsellor at the trial; or
 - (iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which the person 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-
 - (A) he stated that he did not contest the decision; or
 - (B) he did not request a retrial or appeal within the applicable time;
- (j) the Chief Secretary, before a decision is taken in accordance with article 12(1) of the Framework Decision, has made request in accordance with article 18(3) of the Framework Decision, and the issuing State does not consent, in accordance with article 18(2)(g) of the Framework Decision, to the person concerned being prosecuted, sentenced or otherwise deprived of his liberty in Gibraltar for an offence committed prior to the transfer other than that for which the person was transferred;
- (k) the sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which, notwithstanding article 8(3) of

the Framework Decision, cannot be executed in Gibraltar in accordance with the legal or health care system in Gibraltar;

- (l) the judgment relates to criminal offences which under the law of Gibraltar are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

(2) A decision under subregulation (1)(l) to recognise the judgment and enforce the sentence and the related certificate in relation to an offence committed partly within Gibraltar, or in a place equivalent to Gibraltar's territory, shall be taken by the Supreme Court in exceptional circumstances and on a case-by-case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.

(3) In the cases referred to in paragraphs 1(a), (b), (c), (i), (k) and (l), before deciding not to recognise the judgment and enforce the sentence, the Supreme Court, through the Chief Secretary, shall consult the competent authority of the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay.

Partial recognition and enforcement.

14.(1) Where it is possible to consider the recognition of the judgment and enforcement of the sentence in part, the Chief Secretary may, before the Supreme Court has decided whether to refuse the recognition of the judgment and enforcement of the sentence in whole under regulation 13, consult the authority of the issuing State with a view to finding an agreement, as provided for in subregulation (2), and in such a case the Supreme Court shall adjourn the hearing of the application under regulation 12(2).

(2) The Chief Secretary and the authority in the issuing State may agree, on a case-by-case basis, to the partial recognition and enforcement of a sentence in accordance with conditions set out by them, provided such recognition and enforcement does not result in the aggravation of the duration of the sentence, and the Supreme Court shall take judicial notice of such agreement.

Postponement of recognition of the judgment.

15.(1) The Chief Secretary shall inform the issuing State as soon as reasonably practicable whether the judgment and sentence are to be recognised and enforced, including where the Supreme Court has adapted the sentence.

(2) The recognition of the judgment may be postponed where the certificate referred to in article 4 of the Framework Decision is incomplete or manifestly does not correspond to the judgment, until such reasonable deadline set by the Chief Secretary for the certificate to be completed or corrected.

(3) The decision on recognition of the judgment and enforcement of the sentence may be postponed until a translation of the same into English (where the original is not in English) has been transmitted by the issuing State to the executing State, or where the Chief Secretary decides to translate the judgment at Gibraltar's expense, until the translation has been obtained.

(4) Subject to subregulation (5), unless a ground for postponement exists under subregulation (2) or (3), the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 90 days of receipt of the judgment and the certificate.

(5) When in exceptional cases it is not practicable for the Chief Secretary to comply with the period provided for in subregulation (4), he shall without delay inform the issuing State by any means, giving the reasons for the delay and the estimated time needed for the final decision to be taken.

(6) The period of 90 days for a final decision referred to in subregulation (4) includes the period taken for an appeal procedure.

Withdrawal of certificate.

16.(1) The Chief Secretary may, giving reasons for the decision, withdraw a certificate transferred to an executing State for recognition and enforcement where the enforcement of the sentence has not commenced.

(2) Where the Chief Secretary and the authority in the executing State are unable to agree to a partial recognition under article 10 of the Framework Decision, the Chief Secretary shall withdraw the certificate.

(3) Where the Chief Secretary receives notification of withdrawal of a certificate from a competent authority of an issuing State together with reasons for the withdrawal of the certificate, and enforcement of the sentence has not commenced, the Chief Secretary must not enforce the sentence.

Provisional arrest.

17.(1) The Chief Secretary may, at the request of the issuing State, apply to the Supreme Court under regulation 18, for the issue of a warrant for the arrest of a sentenced person or take steps to ensure that a sentenced person remains in Gibraltar, either—

- (a) before arrival of a judgment and related certificate; or
- (b) before a decision to recognise a judgment and enforce the related sentence, and

pending a decision to recognise the judgment and enforce the sentence.

(2) The duration of the sentence shall not be aggravated as a result of the provisional arrest provided for in subregulation (1).

Issue of warrant for transfer of person into Gibraltar.

18.(1) The Supreme Court may, on an application by the Chief Secretary, issue a warrant for the transfer of a sentenced person into Gibraltar and the taking of the person to, and his detention in custody at such place or places in Gibraltar as are specified in the warrant.

(2) The effect of a warrant issued under subregulation (1) shall be to authorise the continued enforcement by Gibraltar of the sentence imposed by the issuing State with due regard to adaptations permitted to the sentence under the Framework Decision, but such a warrant shall otherwise have the same force and effect as a warrant imposing a sentence following conviction by the issuing court.

(3) A person transferred into Gibraltar under these Regulations to serve a sentence or the balance of a sentence imposed on him by an issuing authority of a Member State may not appeal in Gibraltar against either the conviction or sentence.

Transfer of a sentenced person into Gibraltar.

19.(1) This regulation applies where the Chief Secretary sends a notification to the issuing State stating that a final decision has been taken to recognise a judgment and enforce a relevant sentence in Gibraltar.

(2) A sentenced person must be transferred from the issuing State to Gibraltar, at a time agreed by the Chief Secretary and the authority from the issuing State, within 30 days of the final decision of the Chief Secretary on the recognition of the judgment and enforcement of the relevant sentence.

(3) Where in unforeseeable circumstances the transfer is prevented within the period provided for in subregulation (2) the Chief Secretary must immediately contact the authority of the issuing State.

(4) Where subregulation (3) applies, the transfer provided for under subregulation (2) must occur as soon as the circumstances preventing the transfer cease to exist.

(5) Where the circumstances under subregulation (3) cease to exist, the Chief Secretary after having been contacted by the authority in the issuing State may agree a new transfer date.

(6) The Chief Secretary must receive the transfer of the sentenced person within 10 days of the transfer date referred to in subregulation (5).

Miscellaneous

Transit through Gibraltar.

20.(1) Transit through Gibraltar of a sentenced person being conveyed from an executing State to an issuing State upon his transfer pursuant to the Framework Decision, shall be permitted where the Chief Secretary receives a request in writing, and in English, in that behalf from the issuing State and where the issuing State provides the Chief Secretary with a copy, in writing and in English, of the certificate referred to in article 4 of the Framework Decision together with the transit request.

(2) The transit of a person through Gibraltar shall be supervised by a police officer if the Chief Secretary considers it appropriate, and where a person's transit is so supervised the person shall be deemed to be in the custody of a police officer who accompanies him. Detention of the person in custody is permitted for such time as the transit requires.

(3)

(a) This subregulation applies to an aircraft that has taken off from a place (other than Gibraltar International Airport) and that is scheduled to land in a place (other than Gibraltar International Airport) and on board of which there is a person who is being conveyed to an executing State in accordance with the Framework Decision.

(b) Where an aircraft to which this subregulation applies lands (for whatever reason) in Gibraltar, the issuing State shall, upon its landing or within 72 hours, provide the Chief Secretary with the information referred to in subregulation (1).

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(c) While an aircraft to which this subregulation applies is in Gibraltar, a person referred to in paragraph (a) who is onboard that aircraft shall be deemed to be in transit through Gibraltar and subregulation (2) shall apply accordingly.

(4) When in receipt of a request to permit transit, the Chief Secretary shall inform the issuing State if it cannot guarantee that the sentenced person will not be prosecuted, or, except as provided in subregulation (1), detained or otherwise subjected to any restriction of his liberty in Gibraltar for any offence committed or sentence imposed before his departure from the territory of the issuing State.

(5) The Chief Secretary shall notify its decision on whether to permit transit to the issuing State within seven days of receipt of such request. Such a decision may be postponed until a translation has been transmitted to Chief Secretary where the request or certificate is not in English.

Law governing enforcement of sentence.

21.(1) The enforcement of a sentence shall be governed by the law of the executing State.

(2) Subject to subregulations (3) and (4), the Gibraltar authorities shall be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release for a sentenced person that has been transferred to Gibraltar.

(3) The Chief Secretary shall deduct the full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued from the total duration of the deprivation of liberty to be served.

(4) Where the issuing State requests information from the Chief Secretary on the applicable provisions on early or conditional release in Gibraltar, the Chief Secretary shall reply.

(5) The Chief Secretary may request information as to the applicable provisions on early or conditional release in the executing State, and he may either agree to the application of such provisions in the executing State or he may withdraw the certificate.

(6) The Chief Secretary may, in making any decision on early or conditional release of a sentenced person, take account of the provisions of national law indicated by the issuing State under which the person is entitled to early or conditional release.

Specialty.

22.(1) Subject to subregulation (2), where a person is transferred to Gibraltar pursuant to the Framework Decision, he must not be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his personal freedom, for an offence committed before his transfer other than the offence for which he was transferred.

- (2) Subregulation (1) shall not apply in the following cases—
- (a) when the person having had the opportunity to leave Gibraltar has not done so within 45 days of his final discharge, or has returned to Gibraltar after leaving it;
 - (b) where the offence is not punishable on conviction by a term of imprisonment or detention;
 - (c) in circumstances where upon conviction he is liable to a term of imprisonment or detention and such other penalty as does not involve a restriction of his personal liberty, and the Chief Secretary is satisfied that the said other penalty only will be imposed should he be convicted of the offence concerned;
 - (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or measure in lieu thereof, even if the penalty or a measure may give rise to a restriction of his personal liberty;
 - (e) where the person consented to be transferred and that person, where appropriate and at the appropriate time, renounced the speciality rule in accordance with the Framework decision;
 - (f) where, after the transfer, the person expressly and voluntarily renounces entitlement to the speciality rule with regard to specific offences committed or alleged to have been committed by him before his transfer;
 - (g) for cases other than those mentioned under paragraphs (a) to (f), where the issuing State gives its consent in accordance with subregulation (4).
- (3) Renunciation of the speciality rule, in accordance with subregulation (2)(f), must be—
- (a) made before the magistrates' court;
 - (b) recorded by the magistrates' court;
- and the person must—

(c) voluntarily renounce the speciality rule after having obtained, or having been given the opportunity of obtaining or being provided with, professional legal advice before renouncing; and

(d) be aware of the consequences of his so renouncing the speciality rule.

(4) The Chief Secretary may request consent from the authority in the issuing State, accompanied by the information mentioned in article 8(1) of Framework Decision 2002/584/JHA and a translation as referred to in article 8(2) thereof.

(5) For the situations mentioned in article 5 of Framework Decision 2002/584/JHA the Chief Secretary must give the guarantees provided for therein.

(6) Where the Chief Secretary receives a request for consent under the Framework Decision, accompanied by the information and appropriate translation referred to in subregulation (4), the Chief Secretary shall give his consent where there is an obligation to surrender a person under Framework Decision 2002/584/JHA.

(7) The consent referred to in subregulation (6) shall be taken by the Chief Secretary no later than 30 days after receipt of the request from the issuing State.

Amnesty, pardon, review of judgment.

23.(1) An amnesty or pardon may be granted in accordance with section 76 of the Constitution irrespective of the fact whether Gibraltar is the issuing State or executing State in relation to the transfer of a sentenced person.

(2) When Gibraltar is the issuing State for the purposes of the Framework Decision, the Gibraltar authorities may decide on applications for review of the judgment imposing the sentence, to be enforced under the Framework Decision.

Information from the issuing State.

24.(1) Where Gibraltar is the issuing State, the Chief Secretary shall forthwith inform the authority of the executing State of a decision or measure as a result of which the sentence ceases to be enforceable whether immediately or within a certain period of time.

(2) Where Gibraltar is the executing State and the Chief Secretary receives a notification from the authority of the issuing State informing him of a decision or measure as a result of which the sentence ceases to be enforceable whether immediately or within a certain period of time, he shall terminate enforcement of the sentence as soon as he is informed.

Information to be given by the Chief Secretary when Gibraltar is the executing State.

25. The Chief Secretary shall inform the issuing State without delay and by a means which leaves a written record–

- (a) of the forwarding of the judgment and the certificate to him for its execution following receipt of it by another authority in Gibraltar in accordance with article 5(5) of the Framework Decision;
- (b) of the fact that it is in practice impossible to enforce the sentence because after transmission of the judgment and the certificate to Gibraltar, the sentenced person cannot be found in Gibraltar, in which case there shall be no obligation on Gibraltar to enforce the sentence;
- (c) of the final decision to recognise the judgment and enforce the sentence together with the date of the decision;
- (d) of any decision not to recognise the judgment and enforce the sentence in accordance with article 9 of the Framework Decision, together with the reasons for the decision;
- (e) of any decision to adapt the sentence in accordance with article 8(2) or 8(3) of the Framework Decision, together with the reasons for the decision;
- (f) of any decision not to enforce the sentence for the reasons referred to in article 19(1) of the Framework Decision together with the reasons for the decision;
- (g) of the beginning and the end of the period of conditional release, where so indicated in the certificate by the issuing State;
- (h) of the sentenced person's escape from custody;
- (i) of the enforcement of the sentence as soon as it has been completed.

Consequences of the transfer of the sentenced person.

26.(1) Subject to subregulation (2), the Chief Secretary shall not proceed with the enforcement of the sentence once the enforcement of such has begun in the executing State.

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(2) The Chief Secretary may enforce a sentence of a person which has been transferred to an executing State where the Chief Secretary is informed by the executing State of the partial non-enforcement of the sentence pursuant to regulation 25(h).

Languages.

27.(1) The Chief Secretary shall ensure that where a certificate is sent to an executing State it is sent either in an official language of that Member State or with a translation in the official language of that Member State.

(2) The Chief Secretary shall only accept a certificate from an issuing State which is transmitted in English.

(3) Subject to subregulation (4), no translation of the judgment shall be required in English.

(4) The Chief Secretary may request, without delay, after receiving the judgment and the certificate in cases where he finds the content of the certificate insufficient to decide on the enforcement of the sentence, that the judgment or essential parts of it be accompanied by a translation into English or into another official language of the Institutions of the European Union.

(5) A request under subregulation (4) shall be made by the Chief Secretary to the issuing authority, after consultation with the issuing authority, where necessary, to indicate the essential parts of the judgments to be translated.

Costs.

28.(1) Subject to subregulations (2) and (3), all expenses incurred by Gibraltar as an executing State resulting from the application of the Framework Decision shall be borne by Gibraltar.

(2) Expenses incurred in transferring the sentenced person to Gibraltar shall be borne by the issuing State.

(3) Expenses arising exclusively in the territory of the issuing State shall be borne by the issuing State.

(4) Where Gibraltar is the issuing State, Gibraltar shall bare the following—

(a) expenses incurred in transferring the sentenced person to the executing State; and

(b) expenses which arise exclusively in Gibraltar.

Enforcement of sentences following a European arrest warrant.

29. Without prejudice to Framework Decision 2002/584/JHA, provisions of this Framework Decision shall apply, *mutatis mutandis* to the extent they are compatible with provisions under Framework Decision 2002/584/JHA, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to article 4(6) of Framework Decision 2002/584/JHA, or where, acting under article 5(3) of Framework Decision 2002/584/JHA, it has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned.

Revocation and variation of warrants.

30. If at any time it appears to the Chief Secretary appropriate that a warrant under these Regulations for the transfer of a person into or out of Gibraltar should be revoked or varied, the Chief Secretary may revoke the warrant or vary it.

SCHEDULE 1

The following offences, if they are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, shall under the terms of the Framework Decision and without verification of the double criminality of the act, give rise to recognition of the judgment and enforcement of the sentence imposed—

- 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 Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' 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/ships,

— sabotage.

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SCHEDULE 2

CERTIFICATE

referred to in Article 4 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ⁽¹⁾

(a) * Issuing State:

.....

* Executing State:

.....

(b) The court which delivered the judgment imposing the sentence that became final:

Official name:

The judgment was delivered on (give date: dd-mm-yyyy):

.....

The judgment became final on (give date: dd-mm-yyyy):

..... Reference number of the

judgment (if available):

.....

(c) Information related to the authority that may be contacted for any question related to the certificate:

1. Type of authority: Please tick the relevant box:

Central authority

.....

Court

.....

Other authority

.....

2. Contact details of the authority indicated under point (c) 1:

⁽¹⁾ This certificate must be written in, or translated into, one of the official languages of the executing Member State or any other language accepted by that State.

Official name:

Address:

Tel.: (country code) (area/city code)

Fax: (country code) (area/city code)

E-mail address (if available):

3. Languages in which it is possible to communicate with the authority:

4. Contact details of person(s) to be contacted to obtain additional information for the purposes of enforcement of the judgment or agreement on the transfer procedures (name, title/grade, telephone No, fax, e-mail address), if different from 2:

(d) Information regarding the person on whom the sentence has been imposed:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if available):

Date of birth:

Place of birth:

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.....
Last known addresses/residences:
.....

.....
Language(s) which the person understands (if known):
.....

The sentenced person is:

- in the issuing State and is to be transferred to the executing State.
- in the executing State and enforcement is to take place in that State.

Additional information to be provided, if available and if appropriate:

1. Photo and fingerprints of the person, and/or contact details of the person to be contacted in order to obtain such information:

2. Type and reference number of the sentenced person's identity card or passport:

3. Type and reference number of the sentenced person's residence permit:

4. Other relevant information about the sentenced person's family, social or professional ties to the executing State:

(e) Request for provisional arrest by the issuing State (where the sentenced person is in the executing State):

- The issuing State requests the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence.
- The issuing State has already requested the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory,

pending a decision to recognise and enforce the sentence. Please provide the name of the authority in the executing State that has taken the decision on the request to arrest the person (If applicable and available):

(f) Relation to any earlier European Arrest Warrant (EAW):

An EAW has been issued for the purpose of the execution of a custodial sentence or detention order and the executing Member State undertakes to execute the sentence or detention order (Article 4(6) of the EAW Framework Decision).

Date of issue of the EAW and, if available, reference number:

Name of the authority that issued the EAW:

..... Date of decision to undertake execution and, if available, reference number:

Name of the authority that issued the decision to undertake execution of the sentence:

An EAW has been issued for the purpose of prosecution of a person who is a national or resident of the executing State and the executing State has surrendered the person under the condition that the person is to be returned to the executing State in order to serve there the custodial sentence or detention order passed against him or her in the issuing Member State (Article 5(3) of the EAW Framework Decision).

Date of the decision to surrender the person:

..... Name of the authority that issued the decision to surrender:

Reference number of the decision, if available:

..... Date of the surrender of the person, if available:

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(g) Reasons for forwarding the judgment and the certificate (if you have filled in Box (f), there is no need to fill in this box):

The judgment and the certificate are forwarded to the executing State because the issuing authority is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person and:

(a) The executing State is the State of nationality of the sentenced person in which he or she lives.

(b) The executing State is the State of nationality of the sentenced person, to which the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment. If the expulsion or deportation order is not included in the judgment, please provide the name of the authority that issued the order, the date of issue, and, if available, the reference number:

.....
..

(c) The executing State is a State, other than a State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that State.

(d) The executing State has given a notification under Article 4(7) of the Framework Decision, and:

it is confirmed that, to the knowledge of the competent authority of the issuing State, the sentenced person lives and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that state, or

it is confirmed that the sentenced person is a national of the executing State.

(h) Judgment imposing the sentence:

1. The judgment covers offences in total.

Summary of facts and a description of the circumstances in which the offence(s) was (were) committed, including time and place; and the nature of the involvement of the sentenced person:

Nature and legal classification of the offence(s) and the applicable statutory provisions on the basis of which the judgment was made:

2. To the extent that the offence(s) identified under point (h) 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State, which are punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years, please confirm by ticking the relevant box(es):

- 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 Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' 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;

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- 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/ships;
- sabotage.

3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2 or if the judgment and the certificate is forwarded to the Member State, which has declared that it will verify the double criminality (Article 7(4) of the Framework Decision), please give a full description of the offence(s) concerned:

(i) Status of the judgment imposing the sentence:

⁽²⁾ 1. Indicate if the person appeared in person at the trial resulting in the decision:

1. Yes, the person appeared in person at the trial resulting in the decision.
2. No, the person did not appear in person at the trial resulting in the decision.
3. If you have ticked the box under point 2, please confirm the existence of one of the following:
 - 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;
OR
 - 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, 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;

⁽²⁾ Please insert here the date by which the sentenced would be sully served (not taking into account the possibilities of any form of early and/or conditional release) if the person were to stay in the issuing State.

OR

3.2. being aware of the scheduled trial the person 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

3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or 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, and

the person expressly stated that he or she does not contest this decision, OR

the person did not request a retrial or appeal within the applicable time frame.

4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

2. Details of the length of the sentence:

2.1. Total length of the sentence (in days):

.....

2.2. The full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued (in days):

..... as per (...) (give date on which calculation was made: dd-mm-yyyy): ..

2.3. Number of days to be deducted from total length of the sentence for reasons other than the one referred to under 2.2 (e.g. amnesties, pardons or clemencies, etc. already granted with respect to the sentence): as per (give date on which calculation was made: dd-mm-yyyy):

2.4. Sentence expiry date in the issuing State:

Not applicable, because the person is currently not in custody

The person is currently in custody and the sentence, under the law of the issuing State, would be fully served by (give date: dd-mm-yyyy) ⁽²⁾:

3. Type of sentence:

custodial sentence

measure involving deprivation of liberty (please specify):

(j) Information related to early or conditional release:

1. Under the law of the issuing State the sentenced person is entitled to early or conditional release, having served:

half the sentence

two-thirds of the sentence

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- another portion of the sentence (please indicate):
- 2. The competent authority of the issuing State requests to be informed of:
 - The applicable provisions of the law of the executing State on early or conditional release of the sentenced person;
 - The beginning and the end of the period of early or conditional release.

(k) Opinion of the sentenced person:

1. The sentenced person could not be heard because he/she is already in the executing State.
2. The sentenced person is in the issuing State and:
 - a. has requested the forwarding of the judgment and the certificate
 - consented to the forwarding of the judgment and the certificate
 - did not consent to the forwarding of the judgment and the certificate (state reasons given by the sentenced person):
 - b. Opinion of the sentenced person is attached.
 - Opinion of the sentenced person was forwarded to the executing State on (give date: dd-mm-yyyy):

(l) Other circumstances relevant to the case (optional information):

(m) Final information:

The text of the judgment(s) is (are) attached to the certificate (1).

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate

Name:

.....
.....

Post

held

(title/grade):

.....
.....

Date:

.....
.....

Official

stamp

(if

available)

.....

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SCHEDULE 3

NOTIFICATION OF THE SENTENCED PERSON

You are hereby notified of the decision of (competent authority of the issuing State) to forward the judgment of (competent court of the issuing State) dated (date of judgment) (reference number; if available) to (executing State) for the purpose of its recognition and enforcement of the sentence imposed therein in accordance with the national law implementing Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

The enforcement of the sentence will be governed by the law of (executing State). The authorities of that State will be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

The competent authority of (executing State) has to deduct the full period of deprivation of liberty already served in connection with the sentence from the total duration of deprivation of liberty to be served. An adaptation of the sentence by the competent authority of (executing State) may take place only if it is incompatible with the law of that State in terms of its duration or nature. The adapted sentence must not aggravate the sentence passed in (issuing State) by its nature or duration.