

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

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

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LEGAL NOTICE NO. 233 OF 2014.

**INTERPRETATION AND GENERAL CLAUSES ACT**

**DATA PROTECTION ACT 2004 (AMENDMENT)  
REGULATIONS 2014**

In exercise of the powers conferred upon it under section 23(g)(ii) of the Interpretation and General Clauses Act and all other enabling powers, and in order to further transpose Council Decision of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (2000/365/EC), the Government has made the following Regulations–

**Title and commencement.**

1. These Regulations may be cited as the Data Protection Act 2004 (Amendment) Regulations 2014 and come into operation on 1 December 2014.

**Amendment of Act.**

2. The Data Protection Act 2004 (“the Act”) is amended in accordance with these Regulations.

**Section 2.**

3. In section 2 of the Act–

(a) after the definition “compensation order” insert–

““competent authority” for the purposes of implementing the data protection provisions of the Schengen Agreement in Gibraltar, means the Commissioner;”;

(b) by inserting the following definition after “right to privacy”–

““Schengen Agreement” means the Convention implementing the Schengen Agreement of 14th June 1985 between the Government of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, as the same may be amended from time to time, and to the extent that it applies to Gibraltar;

“Schengen State” means a State party to the Schengen Convention;”.

**References to 1969 Constitution.**

4. In sections 7(1)(e), 16(2)(b), 24(5)(b) and 37(3)(a)(ii) of the Act substitute “Gibraltar Constitution Order 2006” for “Gibraltar Constitution Order 1969”.

**Insertion of Part IIA.**

5. The Act is amended by inserting the following part after “PART II”–

**“PART IIA**

*Additional General Rules on the Processing of Personal Data  
Under the Schengen Agreement*

**Additional provisions for the processing of personal data under the Schengen Agreement.**

13A.(1) Subject to subsection (2), personal data communicated under the Schengen Agreement shall be used solely for the purposes for which the Schengen Agreement stipulates the personal data may be communicated for, and the transmission or receipt of that data must be recorded both in the source data file and in the data file in which it is entered.

(2) Personal data communicated under the Schengen Agreement may be used for a purpose other than that for which it was communicated where prior authorisation is sought from and approved by the authority which communicated the personal data.

(3) Where the Competent Authority receives approval from a Schengen State for the use of personal data communicated by it for

a purpose other than that referred to in subsection (1), the use of that data shall be subject to the provisions of this Act and any other applicable Gibraltar law.

(4) Where the competent authority receives a request from a Schengen State for an authorisation to use personal data communicated to it for a purpose other than the purpose for which it originally sent the personal data, the competent authority may only grant such an authorisation in so far as Gibraltar law permits.

**Designated users of the personal data communicated under Schengen Agreement.**

13B. Data referred to in section 13A may only be used by the—

- (a) judicial authorities; and
- (b) departments and authorities,

carrying out tasks or performing duties in connection with the purposes referred to in section 13A.

**Additional duties with respect to accuracy and improper communications.**

- 13C.(1) Where data is communicated pursuant to the Schengen Agreement the sender of that data must ensure the accuracy thereof.
- (2) Where data controller has established, either on its own initiative or further to a request by the data subject that data has been provided that is inaccurate or should not have been communicated, the data controller must immediately inform the recipients.
  - (3) Where the data controller is the recipient of data from a Schengen State and the data controller is notified that the data is inaccurate or should not have been provided the data controller must correct or destroy the data, or indicate that the data is inaccurate or was unlawfully communicated.
  - (4) Nothing in this section shall be construed as a derogation from the protections provided elsewhere in this Act, in particular

those in section 6(1)(b) (accuracy) and section 15 (rectification etc. of data).

**Additional duties in certain circumstances.**

13D. Where, in cases other than those governed by articles 126(1) and 127(1) of the Schengen Agreement, personal data is communicated to another Schengen State pursuant to the Schengen Agreement, article 126(3), with the exception of subparagraph (e), shall apply, in addition to the following requirements–

- (a) a written record shall be kept of the transmission and receipt of personal data (unless such a record is not necessary given the use of the data, in particular if it is not used or is used only very briefly);
- (b) where the recipient is in Gibraltar he shall ensure, in the use of communicated data, a level of protection at least equal to that laid down in this Act for the use of similar data;
- (c) the decision concerning whether and under what conditions the data subject shall, at his request, be provided information concerning communicated data relating to him shall be governed by the provisions of this Act if the request was addressed to someone in Gibraltar.

**Communication of personal data under the Schengen Agreement - police co-operation.**

13E.(1) Without prejudice to articles 126 and 127 of the Schengen Agreement, the communication of personal data between Schengen States under articles 39, 44, 46 and 47 of the Schengen Agreement shall be protected in accordance with the principles of Recommendation No R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector.

(2) In addition to subsection (1), the communication of personal data between Schengen States under article 46 of the Schengen Agreement and received in Gibraltar shall be afforded the following apply–

- (a) the data must be used solely for the purposes indicated by and in compliance with the conditions laid down by the Schengen State sending the personal data;
- (b) the data may only be communicated to police forces and police authorities;
- (c) the data may not be communicated to authorities other than those specified in paragraph (b) without the prior authorisation of the Schengen State which sent the personal data; and
- (d) when requested by the Schengen State which sent the personal data, the authority which received the data shall provide information regarding the use made of the personal data and the results obtained.

**Liaison officers.**

13F.(1) Subject to subsection (2), the provisions of Title VI of the Schengen Agreement on the Protection of Personal Data shall not apply to a liaison officer as described in article 47 of the Schengen Agreement.

(2) The provisions of Title VI of the Schengen Agreement on the Protection of Personal Data shall apply to a liaison officer, as described in article 47 of the Schengen Agreement, where the liaison officer communicates such personal data to the Schengen State which seconded the officer to Gibraltar.

**Disapplication of Act in certain cases.**

13G. This Act shall not apply to data communicated pursuant to Chapters 2 to 5 of Title III of the Schengen Agreement.”.

**Amendment to section 25 of the Act.**

6. The Act is amended by inserting the following subsection after subsection 25(4)–

“(5) A data controller shall not avoid liability under this section by reason only that the data provided to it by a Schengen State was inaccurate.

(6) Any compensation order made under this section against a data controller, for using inaccurate data provided to it by a Schengen State, is recoverable from that State.”.

Dated 1st December, 2014.

G H LICUDI Q.C.,  
For the Government.

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**EXPLANATORY MEMORANDUM**

These Regulations further transpose into the law of Gibraltar Council Decision of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (2000/365/EC).

