

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 511 OF 2020.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

CRIMINAL JUSTICE (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

In exercise of the powers conferred upon her by sections 11, 11B, 15 and paragraph 1 of Schedule 3 of the European Union (Withdrawal) Act 2019, and by section 25 of the European Union (Withdrawal Agreement) Act 2020, the Minister has made the following Regulations-

PART 1

Title.

1. These Regulations may be cited as the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2020.

Commencement.

2. These Regulations come into operation on 1 January 2021.

PART 2

EUROPEAN PROTECTION ORDERS

3.(1) In this Part, “person causing danger” and “protected person” have the same meaning as in regulation 2 of the European Protection Order Regulations 2015 as it has effect on and after 1 January 2021 by virtue of regulations 5 to 7.

(2) For the purposes of the transitional and saving provisions contained in this Part, and the provisions saved further to this Part, the Central Authority for Gibraltar shall continue to be the Chief Secretary.

Revocation of the European Protection Order Regulations 2015.

4. The European Protection Order Regulations 2015 (“the EPO Regulations”) are revoked.

Transitional and saving provision: restraining orders made before 1 January 2021.

5.(1) Where a relevant restraining order was made before 1 January 2021, the magistrates’ court may vary or discharge that order on or after 1 January 2021—

- (a) on an application made by the protected person or by a guardian or representative of that person on their behalf;
 - (b) on an application by the person causing danger, or
 - (c) of the court's own motion.
- (2) Where the magistrates' court has exercised the power under subregulation (1), it must ensure that the following are informed of that decision—
- (a) the person causing danger, and
 - (b) the protected person (or, where appropriate, the guardian or representative of the protected person).
- (3) The court must not provide the person causing danger with the address or contact details of the protected person under subregulation (2) unless the disclosure of those details is necessary to enable the person causing danger to comply with the order.
- (4) For the purposes of this regulation, “a relevant restraining order” is a restraining order that was—
- (a) made in accordance with regulation 10(2) of the EPO Regulations (giving effect to a European protection order), or
 - (b) varied in accordance with regulation 15(6) of those Regulations (giving effect to a modified order).
- (5) For the purposes of this regulation, regulation 2 of the EPO Regulations continues to have effect on and after 1 January 2021 as if it had not been revoked by regulation 4.

Transitional and saving provision: recognition by Gibraltar of European protection orders made by issuing States.

6.(1) The following provisions of the EPO Regulations continue to apply, as if they had not been revoked by regulation 4, to relevant European protection orders as defined in subregulation (2) below –

- (a) regulations 2 and 3;
- (b) regulation 9 (requests for recognition of European protection order);
- (c) regulation 10 (giving effect to a European protection order);
- (d) regulation 11(3) and (4) (procedural requirements relating to the making of a restraining order); and
- (e) regulations 14 to 16;

(2) A relevant European protection order is one received from the issuing state before 1 January 2021 by the Central Authority for Gibraltar under regulation 8 of the EPO Regulations, or any other authority of Gibraltar with no competence to recognise a European protection order but which forwards it to the Central Authority.

(3) For the purpose of this regulation-

- (a) “the Central Authority” has the same meaning as in regulation 3 of the EPO Regulations;
- (b) the provisions of the EPO Regulations are to be read as if the term “Member State” included Gibraltar.

PART 3

EUROPEAN SUPERVISION ORDERS

Revocation of the European Supervision Order Regulations 2014.

7. The European Supervision Order Regulations 2014 (“the ESO 2014 Regulations”) are revoked.

Transitional and saving provision for Gibraltar: decisions on supervision measures received before 1 January 2021.

8.(1) The following provisions of the 2014 Regulations continue to apply, as if they had not been revoked by regulation 7, to relevant decisions on supervision measures as defined in subregulation (2) (and see Article 62(1)(i) of the withdrawal agreement and sections 10A and 10C of the European Union (Withdrawal) Act 2019)-

- (a) regulations 2 and 3;
- (b) regulations 4 to 8;
- (c) regulations 10(2) to (4);
- (d) regulations 11 to 19;
- (e) regulations 20(2) and (3);
- (f) the Schedule.

(2) A relevant decision on supervision measures is one received before 1 January 2021 by

- (a) the central authority or the competent authority of the executing State under regulation 3(2) of the ESO 2014 Regulations (requests to Member States for

monitoring supervision measures), or any other authority in the executing State with no competence to recognised a decision on supervision measures but which forwards the decision to the competent authority); or

- (b) the central authority for Gibraltar under regulation 11(2) of the ESO 2014 Regulations (requests from other Member States for monitoring supervision measures), or any other authority in Gibraltar with no competence to recognise a decision on supervision measures but which forwards the decision to the central authority.

(3) For the purpose of this regulation-

- (a) “the central authority or competent authority of the executing State” has the same meaning as in regulations 2 and 3(9) of the ESO 2014 Regulations;
- (b) “the central authority for Gibraltar” has the same meaning as in regulation 2 of the ESO 2014 Regulations;
- (c) the provisions of the ESO 2014 Regulations referred to in subregulation (1) are to be read as if the term “Member State” included Gibraltar.

PART 4

CRIMINAL INJURIES COMPENSATION SCHEME

Revocation of the Criminal Injuries Compensation Scheme Regulations 2013.

9. The Criminal Injuries Compensation Scheme Regulations 2013 are revoked.

PART 5

MUTUAL RECOGNITION OF FINANCIAL PENALTIES

Revocation of the Mutual Recognition of Financial Penalties Regulations, 2014.

10.(1) The Mutual Recognition of Financial Penalties Regulations 2014 are revoked.

(2) See Article 62(1)(d) of the withdrawal agreement and sections 10A and 10C of the European Union (Withdrawal) Act 2019.

Transitional and saving provision: decisions requiring payment of financial penalties received before 1 January 2021.

11.(1) The following provisions of the Mutual Recognition of Financial Penalties Regulations 2014 continue to apply, as if they had not been revoked by regulation 10, to relevant decisions requiring payment of financial penalties-

- (a) regulations 2, 3, 6, 7, 8, 9, 10 and 11;

(b) Schedules 1, 2 and 3

(2) A relevant decision requiring payment of a financial penalty is one received, with a certificate requesting enforcement of a penalty, before 1 January 2021 by-

(a) the central authority or competent authority of a Member State under regulation 5 of the Mutual Recognition of Financial Penalties Regulations 2014, or by any other authority of the member State with no jurisdiction to enforce a penalty but which transmits the decision and the certificate to the competent authority; or

(b) the Central Authority under regulation 7, or by any other authority in Gibraltar with no jurisdiction to enforce a penalty but which transmits the decision and certificate to the competent authority.

(3) For the purposes of this regulation –

(a) central authority and competent authority have the same meaning as in regulation 2(1) of the Mutual Recognition of Financial Penalties Regulations 2014;

(b) “a certificate requesting enforcement” has the same meaning as in regulation 2(2) of the Mutual Recognition of Financial Penalties Regulations 2014.

(c) for the purposes of this regulation, the provisions of the Mutual Recognition of Financial Penalties Regulations 2014 referred to in subregulation (1) are to be read as if the term “Member State” included Gibraltar.

PART 6

TAKING ACCOUNT OF CONVICTIONS

Amendment of the Criminal Procedure and Evidence Act 2011.

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

(2) In section 144 (decision as to allocation)-

(a) for subsection (4A) substitute-

“(4A) In this section any reference to a previous conviction is a reference to a previous conviction by a court in Gibraltar.”;

(b) delete subsection (4B).

(3) In section 211 (decision on whether summary trial or trial on indictment more suitable)-

(a) for subsection (5) substitute-

“(5) In this section any reference to a previous conviction is a reference to a previous conviction by a court in Gibraltar.”;

(b) delete subsection (6).

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

(5) In section 352 (proof of convictions and acquittals in Gibraltar and in Member States of the European Union)-

(a) for the section heading substitute “Proof of convictions and acquittals in Gibraltar.”;

(b) in subsection (1) delete “or in a Member State of the European Union outside Gibraltar”;

(c) in subsection (4) delete paragraph (c);

(6) In section 371 (“matter in issue between the defendant and the prosecution”) delete subsections (6) and (7).

(7) In section 376 (offences committed by defendant when a child) delete subsections (1A) and (1B).

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

“(4) Any reference in subsection (2) to a previous conviction is to be read as a reference to a previous conviction by a court in Gibraltar.

(5) Subsections (2) and (4) do not prevent the court from treating a previous conviction by a court outside Gibraltar as an aggravating factor in any case where the court considers it appropriate to do so.”.

(9) The amendments contained within this regulation do not apply in relation to proceedings instituted before 1 January 2021.

Dated: 24th December 2020.

S SACRAMENTO,
Minister for Justice.

EXPLANATORY MEMORANDUM

Part 2 revokes the retained EU law which was originally enacted to implement Directive 2011/99/EU of the European Parliament and Council of 13 December 2011 on the European protection order. This Directive enables a measure made in criminal proceedings in one member State for the purpose of protecting a person to be recognised and enforced in another member State. In the absence of an agreement with the EU providing for continued cooperation under this instrument, after the transition period ends on 31 December 2020 these reciprocal arrangements will cease to exist in so far as Gibraltar is concerned. Part 2 also makes transitional and saving provision to provide: for restraining orders that were made before 1 January 2021 to give effect to a European protection order to be varied or discharged on or after that date; and for requests for recognition, modification or revocation of a European protection order received, but not processed, before that day to be processed after it, with modifications to reflect the fact that there will be no further cooperation with the issuing member State on or after 1 January 2021 save as provided for in the withdrawal agreement.

Part 3 revokes the retained EU law which was originally enacted to implement Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ('European supervision orders'). This Framework Decision enables a supervision measure (for example, bail granted subject to conditions) issued in criminal proceedings in one member State to be recognised and monitored in another member State. In the absence of an agreement with the EU providing for continued cooperation under this instrument, after 31 December 2020 these reciprocal arrangements will cease to exist as far as Gibraltar is concerned save as provided for in the withdrawal agreement.

Part 4 revokes the retained EU law which was originally enacted to implement Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. The purpose of this Directive was to set up a system of co-operation to facilitate access to compensation to victims of violent intentional crimes in cases where the crime was committed in a member State of the EU other than where the victim was habitually resident. In the absence of an agreement with the EU providing for continued cooperation under this instrument, as from 1 January 2021 these reciprocal arrangements will cease to exist in so far as Gibraltar is concerned.

Part 5 revokes the retained EU law which was originally enacted to implement Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties. Part 5 also makes saving provision in relation to requests for enforcement of financial penalties received before 1 January 2021 and makes provision for Article 62(1)(d) of the withdrawal agreement.

Part 6 amends legislation which was originally amended to implement 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 new criminal proceedings. This requires known convictions in other EU states to be taken into account (for example, when passing

sentence) to the extent national law requires national convictions to be taken into account. In the absence of an agreement with the EU providing for continued cooperation under this instrument, on 1 January 2021 these reciprocal arrangements will cease to exist in so far as Gibraltar is concerned. The Part makes transitional provision for criminal proceedings instituted before that day.