

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 513 OF 2020.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

IMMIGRATION (PASSENGER NAME RECORD) (AMENDMENT) (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 section 25 of the European Union (Withdrawal Agreement) Act 2020, the Minister has made the following Regulations-

Title.

1. These Regulations may be cited as the Immigration (Passenger Name Record) (Amendment) (EU Exit) Regulations 2020.

Commencement.

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

Amendment of the Immigration (Passenger Name Record) Rules 2018.

3.(1) The Immigration (Passenger Name Record) Rules 2018 are amended in accordance with this regulation.

(2) In rule 2-

(a) insert the following definition after the definition of “flight”-

““non-Gibraltar competent authority” means an authority based in a third country that is competent for the prevention, detection, investigation or prosecution of terrorist offences or serious crime;”

(b) for the definition of “serious criminal offence” substitute-

““serious crime” has the meaning given in the Passenger Name Record Directive”;

(c) for the definition of “terrorist offences” substitute-

““terrorist offences” has the meaning given in the Passenger Name Record Directive”;

(d) Insert the following definition after the definition of “supervisory authority”-

““third country” means a country or territory other than Gibraltar”;

(3) In rule 3(2)(b) for “with the PIUs of Member States and with Europol” substitute “, where appropriate, with a non-Gibraltar competent authority”.

(4) In rule 5(2)(a) delete “and where relevant, by Europol in accordance with the Europol Regulations 2017”.

(5) In rule 5(2)(b) delete “or, where appropriate, Europol”.

(6) For rule 7 and 8 substitute-

“Requests for PNR data made by the Gibraltar Competent Authority to a non-Gibraltar Competent Authority.

7.(1) A Gibraltar competent authority must channel its requests for PNR data processed by a non-Gibraltar competent authority through the Gibraltar PIU.

(2) Where necessary in the case of an emergency and provided the conditions laid down in paragraph (3) are satisfied, a Gibraltar competent authority may make a request for PNR data directly to a non-Gibraltar Competent Authority.

(3) The conditions are that—

- (a) the request is made solely for the purposes of the prevention, detection, investigation or prosecution of terrorist offences or serious crime;
- (b) the request is made in respect of a specific case;
- (c) the request is duly reasoned; and
- (d) a copy of the request is sent to the PIU.

Transfers of PNR to non-Gibraltar Competent Authorities.

8.(1) The PIU may transfer PNR data or the result of processing that data to a non-Gibraltar competent authority if either of the conditions set out in paragraph (2) or (2A) is met.

(2) The first condition is that—

- (a) the request from the non-Gibraltar competent authority is duly reasoned;
- (b) the PIU is satisfied that the transfer is necessary for the prevention, investigation, detection or prosecution of terrorist offences or serious crime, and

- (c) the non-Gibraltar competent authority agrees to transfer the data to another non-Gibraltar competent authority only where it is strictly necessary for the purposes described in sub-paragraph (b).

(2A) The second condition is that-

- (a) following the assessment referred to in rule 5(2)(a) a person is identified by the PIU as requiring further examination, and
- (b) the PIU considers it necessary for the prevention, investigation, detection or prosecution of terrorist offences or serious crime for a non-Gibraltar competent authority to be notified of that fact.

(3) In the case of PNR data that has been depersonalised through the masking out of data elements pursuant to rule 9(2), the PIU must not transfer the unmasked PNR data except where—

- (a) the PIU is satisfied that the disclosure is necessary for the purposes of preventing, detecting, investigating or prosecuting terrorist offences or serious crime in a specific case, and
- (b) the disclosure is approved in accordance with rule 9(3)(b).

(4) The PIU must inform the data protection officer each time PNR data is transferred to a non-Gibraltar competent authority.”.

(7) In rule 9(5) “for in accordance with rule 5(1) to inform the PIUs of Member States of a positive match” substitute “in accordance with rule 5(1) to inform non-Gibraltar competent authorities of a positive match”.

(8) In rule 10(5)(b) for “PIUs of Member States” substitute “non-Gibraltar competent authorities”.

(9) Delete rule 13.

Revocation of Council Decisions 2012/381/EU and 2012/472/EU.

4. The following Council Decisions are revoked—

- (a) Council Decision 2012/381/EU of 13 December 2011 on the conclusion of the Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service;
- (b) Council Decision 2012/472/EU of 26 April 2012 on the conclusion of the Agreement between the United States of America and the European Union on the

use and transfer of passenger name records to the United States Department of Homeland Security.

Revocation of Commission Implementing Decision 2017/759.

5. Commission Implementing Decision (EU) 2017/759 of 28 April 2017 on the common protocols and data formats to be used by air carriers when transferring PNR data to Passenger Information Units is revoked.

Savings provision- requests received before commencement.

6.(1) This regulation applies to requests received by the PIU in accordance with Article 9 or 10 of the Directive 2016/681/EU of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime on or before commencement (and see Article 63(1)(g) of the withdrawal agreement and sections 10A and 10C of the European Union (Withdrawal) Act 2019).

(2) The following provisions of the Immigration (Passenger Name Record) Rules 2018 (“the 2018 Rules”) continue to have effect in relation to those requests as if the amendments made to the provisions by regulation 3 did not apply-

- (a) rule 5(2) (processing of PNR data);
- (b) rule 8 (transfer of data to third countries);
- (c) rule 2 (interpretation) and rule 3(2)(b) (Passenger Information Unit) but only for the purposes of the other provisions which continue to have effect by virtue of this regulation.

(3) In this regulation, “the PIU” has the same meaning as in the 2018 Rules.

Savings provision – information received by virtue of the PNR Directive.

7.(1) This regulation applies to PNR data which was received by the PIU by virtue of Directive 2016/681/EU of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection investigation and prosecution of terrorist offences and serious crime (including that Directive as it applies by virtue of Article 63(1)(g) of the withdrawal agreement).

(2) The PIU may only transfer data to which this regulation applies, or the result of processing such data, under rule 8(2A) of the 2018 Rules on the basis that the second condition is met if the transfer is being made to a non-Gibraltar competent authority which is an authority of a member State.

(3) In this regulation, and in regulation 6,-

“the 2018 Rules” means the Immigration (Passenger Name Record) Rules 2018;

“non-Gibraltar competent authority”, “the PIU” and “PNR data” have the same meaning as in the 2018 Rules.

(4) In respect of regulation 6 (savings provision – requests received before commencement) and this regulation, see Article 63(1)(g) and Title VII of Part 3 of the withdrawal agreement and sections 10A and 10C of the European Union (Withdrawal) Act 2019).

Dated: 24th December 2020.

S SACRAMENTO,
Minister for Justice.