

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 514 OF 2020.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

LAW ENFORCEMENT AND SECURITY (AMENDMENT ETC.) (EU EXIT) (EUROPEAN CRIMINAL RECORD INFORMATION SYSTEM) REGULATIONS 2020

In exercise of the powers conferred upon her by sections 11, 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 Law Enforcement and Security (Amendment etc.) (EU Exit) (European Criminal Record Information System) Regulations 2020.

Commencement.

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

Interpretation.

3. In these Regulations—

“the Framework Decision” means Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States;

“Gibraltar Central Authority” means the authority designated as the “central authority” for Gibraltar in accordance with regulation 3 of the Exchange of Criminal Records Regulations 2014 as in force immediately before the commencement of these Regulations.

Revocation of the Exchange of Criminal Records Regulations 2014.

4. Subject to regulations 5 (saving provisions - information transmitted to the Gibraltar Central Authority before commencement) and 6 (transitional provisions - requests made before commencement for information from the Gibraltar Central Authority), the Exchange of Criminal Records Regulations 2014 are revoked.

Saving provisions – information transmitted to the Gibraltar Central Authority before commencement or under Article 62(1)(h) of the withdrawal agreement.

5.(1) This regulation applies in relation to information transmitted to the Gibraltar Central Authority before commencement or under Article 62(1)(h) of the withdrawal agreement in accordance with Article 4(2), (3) or (4) of the Framework Decision (obligations of the convicting Member State) or Article 7(1), (2) or (4) of the Framework Decision (reply to a request for information on convictions).

(2) The following provisions of the Exchange of Criminal Records Regulations 2014 continue to have effect in relation to information to which this regulation applies—

- (a) regulation 2 (interpretation);
- (b) regulation 3 (designation as a “central authority”);
- (c) regulation 6 (obligations on storage and accuracy of information);
- (d) regulation 10 (replies to a request for information by a non-EU country);
- (e) regulation 13 (conditions for the use of personal data).

(3) The provisions referred to in paragraph (2) are to be construed as if Gibraltar continued to be within the European Union.

Transitional provisions – requests made before commencement for information from the Gibraltar Central Authority.

6.(1) This regulation applies where—

- (a) a request referred to in regulation 8 or 9 (replies to a request for information under Article 6 of the Framework Decision in relation to criminal proceedings and proceedings other than criminal proceedings) or regulation 11 (replies to a request for information under Article 6 of the Framework Decision to a central authority of a member State other than the member State of the person’s nationality) of the Exchange of Criminal Records Regulations 2014 was made to the Gibraltar Central Authority before commencement, and
- (b) the requested information was not transmitted before commencement.

(2) The following provisions of the Exchange of Criminal Records Regulations 2014 continue to have effect in relation to that request, so far as relevant—

- (a) regulation 2 (interpretation);
- (b) regulation 3 (designation as a “central authority”);
- (c) regulation 6 (obligations on storage and access to information);

- (d) regulation 8;
- (e) regulation 9;
- (f) regulation 11;
- (g) regulation 12.

(3) The provisions referred to in paragraph (2) are to be construed as if Gibraltar continued to be within the European Union.

(4) See Article 62(1)(h) and (j) and Title VII of Part 3 of the withdrawal agreement and sections 10A and 10B of the European Union (Withdrawal) Act 2019.

Revocation of Council Decision 2009/316/JHA.

7. Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA is revoked.

Dated: 24th December 2020.

S SACRAMENTO,
Minister for Justice.