

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 515 OF 2020.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

LAW ENFORCEMENT AND SECURITY (AMENDMENT ETC.) (EU EXIT) (EUROPOL) 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 Law Enforcement and Security (Amendment etc.) (EU Exit) (Europol) Regulations 2020.

Commencement.

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

Interpretation

3. In these Regulations—

“Europol” means the European Union Agency for Law Enforcement Cooperation, as established by the Europol Regulation;

“Europol Regulation” means Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA.

Revocation of the Europol Regulation and the Europol Regulations 2017.

4.(1) Subject to regulation 7 (saving provisions – information provided before commencement day), the Europol Regulation is revoked.

(2) Subject to regulation 7, the Europol Regulations 2017 are revoked.

Revocation of Europol Council Decisions.

5. The following Council Decisions are revoked in so far as they are retained EU law—

- (a) Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol);
- (b) Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information;
- (c) Council Decision 2009/935/JHA of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements;
- (d) Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files;
- (e) Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information.

Revocation of Commission Decision (EU) 2017/388.

6. Commission Decision (EU) 2017/388 of 6 March 2017 confirming the participation of the United Kingdom of Great Britain and Northern Ireland in Regulation (EU) 2016/794 of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation (Europol) is revoked.

Saving provisions – information provided before commencement.

7.(1) The following provisions of the Europol Regulation continue to have effect in relation to information provided by Europol to Gibraltar before the commencement of these Regulations, with the modifications specified below (and see Title VII of Part 3 of the withdrawal agreement and sections 10A and 10C of the European Union (Withdrawal) Act 2019)—

- (a) paragraph 3 of Article 20 (access by Member States and Europol's staff to information stored by Europol), with the modification that the reference to "Member States" is to be treated as a reference to "any person or body having functions of a public nature that received information provided by Europol prior to commencement day, or successor thereto,";
- (b) for paragraph 7 of Article 23 (common provisions), substitute—

“7. Onward transfers of personal data held by Europol by any person or body having functions of a public nature that received information provided by Europol prior to commencement day, or successor thereto, shall be prohibited, unless Europol has given its prior explicit authorisation.”;
- (c) Article 30 (processing of special categories of personal data and of different categories of data subjects), with the following modifications—

- (i) omit paragraphs 3 and 6;
 - (ii) in paragraph 4, omit “or Union”;
 - (iii) in paragraph 5, the reference to “Chapter V” is to be treated as a reference to “national law”;
- (d) Article 32 (security of processing), with the following modifications—
- (i) omit paragraph 1;
 - (ii) in paragraphs 2 and 3, omit “Europol and”;
 - (iii) in paragraph 2, the reference to “each Member State” is to be treated as a reference to “any person or body having functions of a public nature that received information provided by Europol prior to commencement day, or successor thereto,”;
 - (iv) in paragraph 3, the reference to “Member States” is to be treated as a reference to “any person or body having functions of a public nature that received information provided by Europol prior to commencement day, or successor thereto,”.
- (2) Article 42 of the Europol Regulation (supervision by the national supervisory authority) continues to have effect, with the modifications specified below—
- (a) for paragraph 1, substitute—
 - “1. The Gibraltar Regulatory Authority shall have the task of monitoring independently, in accordance with national law, the permissibility of the transfer, the retrieval and any communication to Europol before the date on which regulation 19 of the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2020 (revocation of the Europol Regulation) commenced of personal data by Gibraltar, and of examining whether such transfer, retrieval or communication violates the rights of the data subjects concerned. For that purpose, the Information Commissioner’s Office shall have access to data submitted by Gibraltar to Europol in accordance with the relevant national procedures.”;
 - (b) omit paragraphs 2 and 3;
 - (c) for paragraph 4, substitute—
 - “4. Any person shall have the right to request the Gibraltar Regulatory Authority to verify the legality of any transfer or communication to Europol before the date on which regulation 19 of the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2020 (revocation of the Europol Regulation) commenced of data concerning him or her in any

form and of access to those data by Gibraltar. That right shall be exercised in accordance with national law.”.

Dated: 24th December 2020

S. SACRAMENTO
Minister for Justice