

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 521 OF 2020.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

EUROPEAN ARREST WARRANT (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-

PART 1

INTRODUCTION

Citation and commencement.

1. These Regulations may be cited as the European Arrest Warrant (EU Exit) Regulations 2020 and come into force on 1 January 2021.

PART 2

AMENDMENT OF THE EUROPEAN ARREST WARRANT ACT 2004

Amendment of the European Arrest Warrant Act 2004.

2.(1) The European Arrest Warrant Act 2004 is amended in accordance with this regulation.

(2) For the long title substitute “AN ACT TO PROVIDE FOR THE CONTINUATION OF ARRANGEMENTS FOR THE EXTRADITION OF PERSONS BETWEEN GIBRALTAR AND THE UNITED KINGDOM AND MATTERS CONNECTED THERETO.”.

(3) For section 1 substitute-

“1. This Act may be cited as the Extradition Arrest Warrant Act 2004.”

(4) In section 2-

(a) delete the definitions of “Eurojust”, “European Communities” and “Framework Decision”;

(b) for the definition of “European Arrest Warrant” substitute-

““Extradition arrest warrant” means, subject to section 23, a warrant, order or decision of a judicial authority of a State, issued under such laws as give effect to arrangements for expedited extradition between that State and Gibraltar, for the arrest and surrender by Gibraltar to that State of a person in respect of an offence committed or alleged to have been committed by him under the law of that State;”;

(c) for the definition of “State” substitute-

““State” means–

(a) a State designated by Order for the purposes of this Act by the Government; or”

(b) the United Kingdom;”.

(5) In section 3-

(a) in subsection (1) for “Subject to subsections (2) and (3), this” substitute “This”;

(b) delete subsections (2) and (3).

(6) In section 7-

(a) in subsection (1)(c) delete “having particular regard to article 2 of the Framework Decision”;

(b) in subsection (1)(d) delete “, and falling within the scope of articles 1 and 2 of the Framework Decision,”.

(7) In section 11(2B) delete “(article 27(2) of the Framework Decision)”.

(8) Delete section 12A.

(9) In section 13-

(a) for “issuing Member State”, on both occasions it appears, substitute “issuing State”;

(b) delete “(in particular with respect to articles 3 to 5 and article 8 of the Framework Decision)”.

(10) In section 14B for subsections (2), (3) and (4) substitute-

“(2) In conducting the hearing referred to in subsection (1) the magistrates’ court may be assisted by a person designated in accordance with the law of the requesting court.

(3) Gibraltar law shall govern a hearing for the purpose of section 14A and be subject to any conditions mutually agreed between the magistrates' court and the issuing judicial authority.

(4) In order to ensure the proper application of this section the Chief Justice may assign another judicial authority to take part in the hearing of the requested person.”.

(11) In section 15A-

(a) in subsection (2) for “a Member State” substitute “a State”;

(b) in subsection (2)(a) for “of the Framework Decision” substitute “of this Act”.

(12) In section 22A-

(a) for “Member State”, on both occasions it appears, substitute “State”;

(b) for “third State”, on each occasion it appears, substitute “third country”.

(13) In section 24A delete “in accordance with article 4a(1)(d) of the Framework Decision”.

(14) For 24B substitute-

“Person surrendered – review of detention.

24B. Where a person is surrendered to the Gibraltar authorities subject to a requirement that-

(a) he will be personally served with the enforceable judgment without delay after the surrender and will be expressly informed of his right to a retrial or appeal in which he has the right to participate and which allows the merits of the case including fresh evidence, to be re-examined, and which may lead to the original judgment being reversed; and

(b) he will be informed of the time frame within which he has to request such a retrial or appeal, as mentioned in the Extradition arrest warrant,

and he has requested a retrial or appeal, the detention of that person pending such retrial or appeal shall, until these proceedings are finalised, be reviewed by the Magistrates' Court either on a regular basis or upon the request of the person concerned and in conducting such a review the court shall in particular consider the suspension or interruption of the detention and the retrial or appeal must begin within due time after the person is surrendered.”.

(14) In section 30(1) delete “Member”.

(15) Delete section 37.

(16) Where “a European arrest warrant”, “European arrest warrant” or “European arrest warrants” appears in the following places substitute those words with “an Extradition arrest warrant” or “Extradition arrest warrants” or “Extradition arrest warrant” as the case may be-

- (a) in section 2 in-
 - (i) the definition of “issuing judicial authority” on both occasions it appears;
 - (ii) the definition of “issuing State” on both occasions it appears;
- (b) in section 5A;
- (c) in the heading to Part 2;
- (d) in section 6 in its section heading and in both occasions it appears in its text);
- (e) in section 7 in subsections (1), (1)(b), (1)(c), (1)(f)(i), (1)(f)(ii), (1)(f)(iii), (2) and (3) (on both occasions it appears);
- (f) in section 8-
 - (i) in subsection (1) on the four occasions it appears;
 - (ii) in subsection (3);
 - (iii) in subsection (4)(a);
 - (iv) in subsection (8)(a);
 - (v) in subsection (8)(c);
 - (vi) in subsection (9), on both occasions it appears;
 - (vii) in subsection (10) on the four occasions it appears;
- (g) in sections 8A(1), (2) and (3);
- (h) in sections 9(1), (2), (2A) and (3);
- (i) in sections 9A(1), (2)(a), (2)(b) (on both occasions it appears) and (4)(a);
- (j) in section 9B;
- (k) in section 10 (on the three occasions it appears in the text including in paragraph (c));

- (l) in sections 11(1)(a) and (2B)(a);
- (m) in section 11A(1) and (3);
- (n) in section 12(2)(a), (b) and (d);
- (o) in section 12B;
- (p) in section 13A;
- (q) in section 14A(1) and (2);
- (r) in section 15(1)(a) on both occasions it appears, (1)(b), (2), (3)(c), (4)(c), (5)(b)(i)(a), (5)(b)(ii)(b), and (6) (in the text following paragraph (c));
- (s) in section 15A(1) (on both occasions it appears), (2), and (2)(a);
- (t) in section 16(1)(a) and (b), and (2) (in the text following the first paragraph (b));
- (u) in section 16A(1) (on both occasions it appears), (2) and (2)(a);
- (v) in section 17A(1) (on both occasions it appears);
- (w) in section 17B (on both occasions it appears);
- (x) in section 18(1) (on both occasions it appears);
- (y) in section 20(1), (1)(a), (1)(b), (1)(c), (1)(d), (1A)(a), (3)(a), (4)(b) and (5) (on both occasions it appears);
- (z) in section 21(1) (on both occasions it appears), (1)(b), (2)(a), (2)(c) and (2)(d);
- (za) in section 22(1) (on both occasions it appears), (1)(a), (2)(a)(i), (2)(c), (2)(d) and (3) (on both occasions it appears);
- (zb) in section 22A(1) and (2) (on both occasions it appears);
- (zc) in section 22B;
- (zd) in the heading to Chapter 2;
- (ze) in section 23;
- (zf) in section 24(1), (2), (2)(c), (2)(f)(i) (on both occasions it appears), 2(f)(ii), (2)(f)(iii), (3) and (4) (on both occasions it appears);
- (zg) in section 24A(1) (on both occasions it appears) and (2)(b);

- (zh) in section 24C;
- (zi) in section 25(1) (on the three occasions it appears), and (2) (on both occasions it appears);
- (zj) in section 25A(1) (on both occasions it appears);
- (zk) in section 25B(1), and (1)(a);
- (zl) in section 25C(1) and (1)(b);
- (zm) in section 26(b) and (c)(i);
- (zn) in section 28(1), (2) and (3);
- (zo) in section 29(a);
- (zp) in section 31(a) and (b) (on both occasions it appears);
- (zq) in section 32 (on both occasions it appears);
- (zr) in section 33(1), (6), and (7);
- (zs) in section 33AA(1);
- (zt) in section 33AB(2), (3);
- (zu) in section 33AD(3);
- (zv) in section 33A and 33A(a);
- (zw) in section 34(1), (2)(d)(ii), (3) (on both occasions it appears) and (5);
- (zx) in the heading to section 34A and in section 34A(1);
- (zy) in section 35(2), (3), and (4) (on both occasions it appears);
- (zz) in section 40(1);
- (zza) in section 43(2) (on both occasions it appears);
- (zzb) in section 44(2)(a);
- (zzc) in section 45(2)(a), (4)(a), and (6)(b);
- (zzd) in section 49(1);

(zze) in section 50(1);

(zzf) in the heading to section 52 and in section 52(1), (2) and (3);

(zzg) in Schedule 1-

(i) in the headings (on both occasions it appears);

(ii) in the text which reads “Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants:”;

(zzh) in Schedule 2; and

(zzi) in the heading to Schedule 3 and in the indicative model letter of rights on the four occasions it appears.

PART 3

AMENDMENT OF THE FUGITIVE OFFENDERS ACT 2002

Amendment of the Fugitive Offenders Act 2002.

3.(1) The Fugitive Offenders Act 2002 is amended in accordance with this regulation.

(2) For the Long Title substitute-

“AN ACT TO MAKE PROVISION FOR THE RETURN OF OFFENDERS TO CERTAIN COMMONWEALTH COUNTRIES, THE REPUBLIC OF IRELAND AND THE UNITED KINGDOM’S OVERSEAS TERRITORIES.”.

(3) In section 2(b) after “section 3(1)” insert “or the Republic of Ireland”.

(4) In section 3(3) after “any designated Commonwealth country” insert “or the Republic of Ireland”.

(5) In section 4(1) after “a designated Commonwealth country” insert “or the Republic of Ireland”.

(6) In section 4(1)(a) after “a designated Commonwealth country” insert “or the Republic of Ireland”.

(7) In section 4(2) after “a designated Commonwealth country” insert “or the Republic of Ireland”.

(8) In section 5(1) after “a designated Commonwealth country” insert “or the Republic of Ireland”.

(9) In section 6(1) after “a designated Commonwealth country” insert “or the Republic of Ireland”.

(10) In section 12(1)(a) after “a designated Commonwealth country” insert “or the Republic of Ireland”.

(11) In section 12(2) after “the designated Commonwealth country” insert “or the Republic of Ireland”.

(12) In section 15(1)(b) after “any designated Commonwealth country” insert “or the Republic of Ireland”.

(13) In the heading to the Schedule after “Commonwealth countries” insert “or the Republic of Ireland”.

PART 4

Deleted

4. *Deleted.*

PART 5

CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

Consequential and transitional provision.

5. In any Act or subsidiary legislation, for the words “European Arrest Warrant Act” substitute “Extradition Arrest Warrant Act” wherever it appears.

6.(1) Part 2 does not apply in a case where, before these regulations come into force—

- (a) a person has been arrested under a European arrest warrant (within the meaning of the European Arrest Warrant Act 2004);
- (b) a person has been arrested under section 9A of the European Arrest Warrant Act 2004 (provisional arrest), or
- (c) a person has been extradited to or from Gibraltar under the European Arrest Warrant Act 2004.

(2) See Article 62(1)(b) of the withdrawal agreement, Article 51 and Title IV of Part 3 of the EEA EFTA separation agreement and sections 10A to 10C of the European Union (Withdrawal) Act 2019.

Dated: 24th December 2020.

S SACRAMENTO,
Minister for Justice.