

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5050 GIBRALTAR Thursday 4th May 2023

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LEGAL NOTICE NO. 115 OF 2023

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### THE SERVICE OF DOCUMENTS AND TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL MATTERS (REVOCATION AND SAVINGS PROVISIONS) (EU EXIT) REGULATIONS 2023

In exercise of the powers conferred upon on her by section 11 and 11B of, and paragraph 1 of Schedule 3 to the European Union (Withdrawal) Act 2019 and all other enabling powers, the Minister with responsibility for Justice has made the following Regulations –

#### **Title.**

1. These Regulations may be cited as The Service of Documents and Taking of Evidence in Civil and Commercial Matters (Revocation and Savings Provisions) (EU Exit) Regulations 2023.

#### **Commencement.**

2. These Regulations come into operation on the day of publication.

## PART I

### Service of Documents in Civil and Commercial Matters

#### **Interpretation of Part I.**

3. In this Part-

“the Agreement” means the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters;

“Regulation (EC) No 1393/2007” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters and repealing Council Regulation (EC) No. 1348/2000;

“central body” means a central body designated as such by Gibraltar before IP completion day for the purposes of Article 3 of Regulation (EC) No 1393/2007 (central body);

“receiving agency” means the public officers, authorities, or other persons designated by Gibraltar before IP completion day as being competent for the receipt of judicial or extrajudicial documents from member States for the purposes of Article 2(2) of Regulation (EC) No 1393/2007 (receiving agencies).

**Revocation of Council Decision 2005/794/EC.**

4. Council Decision (EC) 2005/794 of 20 September 2005, on the signing, on behalf of the Community, of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters, is revoked.

**Revocation of Council Decision 2006/326/EC.**

5. Council Decision (EC) 2006/326 of 27 April 2006, concerning the conclusion of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters, is revoked.

**Revocation of Regulation (EC) 1393/2007.**

6. Regulation (EC) No 1393/2007 is revoked.

**Saving relating to the service of judicial and extrajudicial documents: application of Article 68 of the withdrawal agreement**

7.(1) Nothing in this Part affects the application of paragraph (a) of Article 68 of the withdrawal agreement.

(2) Regulation (EC) 1393/2007 continues to have effect for the purposes of that paragraph.

**Saving: Regulation (EC) No 1393/2007 - judicial and extrajudicial documents received in Gibraltar before commencement of these Regulations.**

8.(1) Regulation (EC) No 1393/2007 continues to apply with the modifications set out in subregulation (2) in relation to judicial and extrajudicial documents which were received in Gibraltar after IP completion day but before commencement for the purposes of service in Gibraltar by one of the following-

- (a) a receiving agency;
- (b) a central body;
- (c) diplomatic or consular agents as referred to in Article 13 of that Regulation (service by diplomatic or consular agents);
- (d) an addressee where the documents have been sent directly to that person by postal services as referred to in Article 14 of that Regulation (service by postal services); or

- (e) judicial officers, officials or other competent persons of Gibraltar, as referred to in Article 15 of that Regulation (direct service).
- (2) Those modifications are that Regulation (EC) No 1393/2007 must be read as if—
- (a) the term “Member State” included Gibraltar;
  - (b) Article 2(4) (provision of information to the Commission about receiving agencies) were deleted;
  - (c) Article 17 (implementing rules) were deleted;
  - (d) Article 18 (committee) were deleted;
  - (e) Article 20(2) and (3) (relationship with agreements or arrangements to which Member States are party) were deleted;
  - (f) Article 21 (legal aid) were deleted;
  - (g) Article 22(4) (protection of information transmitted) were deleted;
  - (h) Article 23 (communication and publication) were deleted;
  - (i) Article 24 (review) were deleted.

**The Agreement: cessation, and saving, of rights etc.**

9.(1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which are derived from the Agreement and continue by virtue of section 7(1) of the European Union (Withdrawal) Act 2019, cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

(2) Nothing in this regulation affects the application of paragraph (3) of Article 69 of the withdrawal agreement and any rights, powers, liabilities, obligations, restrictions, remedies and procedures derived from the Agreement continue to be recognised and available for the purposes of that paragraph.

(3) Any such rights, powers, liabilities, obligations, restrictions, remedies and procedures derived from the Agreement continue to be recognised and available, as if Gibraltar remained a State bound by the Agreement on and after IP completion day, in relation to judicial and extrajudicial documents which were received in Gibraltar after IP completion day but before commencement for the purposes of service in Gibraltar by one of the bodies referred to in paragraphs (a) to (e) of regulation 8(1) of these Regulations.

## **PART 2**

### **Taking of Evidence in Civil and Commercial Matters**

#### **Interpretation of Part 2.**

10. In this Part “Regulation (EC) No 1206/2001” means Regulation (EC) No 1206/2001 of the Council of the European Union on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

#### **Revocation of Regulation (EC) 1206/2001.**

11. Regulation (EC) No 1206/2001 is revoked.

#### **Saving relating to requests received before IP completion day: application of Article 68 of the withdrawal agreement**

12. Nothing in this Part affects the application of paragraph (b) of Article 68 of the withdrawal agreement and Regulation (EC) No 1206/2001 continues to have effect for the purposes of that paragraph.

#### **Saving: Regulation (EC) No 1206/2001 – requests received in Gibraltar after IP completion day and before commencement.**

13.(1) Regulation (EC) No 1206/2001 continues to apply with the modifications set out in subregulation (2) in relation to requests received in Gibraltar after IP completion day and before commencement by one of the following-

- (a) a requested court;
- (b) a central body;
- (c) a central body or competent authority referred to in Article 17(1) of that Regulation (request by a court to take evidence directly in another Member State).

(2) Those modifications are that Regulation (EC) No 1206/2001 must be read as if—

- (a) the term “Member State” included Gibraltar;
- (b) Article 2(2) (list of courts) were deleted;
- (c) Article 19 (implementing rules) were deleted;
- (d) Article 20 (committee) were deleted;
- (e) Article 21(3) (agreements to be sent to the Commission) were deleted;

- (f) Article 22 (provision of information to the Commission) were deleted;
  - (g) Article 23 (review) were deleted;
  - (h) in the Annex to that Regulation, “(OJ L 174, 27.6.2001, p.1)” in each place where that phrase appears, were deleted.
- (3) For the purposes of this regulation-
- (a) “central body” means a central body designated as such by Gibraltar before IP completion day for the purposes of Article 3(1) of Regulation (EC) No 1206/2001 (central body);
  - (b) “competent authority” means a competent authority designated by Gibraltar before IP completion day for the purposes of Article 3(3) of Regulation (EC) No 1206/2001;
  - (c) “requested court” has the meaning given by Article 2(1) of Regulation (EC) No 1206/2001 (direct transmission between the courts);
  - (d) “requests” has the meaning given by Article 2(1) of Regulation (EC) No 1206/2001.

**Transitional and saving provision – Part 34 Civil Procedure Rules 1998.**

14.(1) Where regulation 12 applies, rules 34.22 and 34.24 of the Civil Procedure Rules 1998 continue to apply on and after IP completion day as if amendments to those rules had not been made by the UK Civil Procedure Rules 1998 (Amendment)(EU Exit) Regulations 2019.

(2) Where regulation 13 applies, rules 34.22 and 34.24 of the Civil Procedure Rules 1998 continue to apply on and after commencement as if amendments to those rules had not been made by the UK Civil Procedure Rules 1998 (Amendment)(EU Exit) Regulations 2019.

(3) If before IP completion day a court had made an order for the issue or submission of a request under rule 34.23 of the Civil Procedure Rules 1998 but further action required by that rule had not been taken by IP completion day, the court may treat the order as one for the issue of a letter of request under rule 34.13 and proceed accordingly.

Dated: 4<sup>th</sup> May 2023.

S. SACRAMENTO,  
Minister with responsibility for Justice.

### **EXPLANATORY MEMORANDUM**

These Regulations revoke Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in Member States of judicial and extrajudicial documents in civil or commercial matters (the Service Regulation). The Regulations also revoke Regulation (EC) No 1206/2001 of the Council of the European Union on cooperation between the Courts of the Member States in the taking of evidence in civil or commercial matters (the Evidence Regulation). It makes savings provisions for documents or requests received in Gibraltar before commencement of these Regulations.