

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4129 of 1 December, 2014

LEGAL NOTICE NO. 220 OF 2014.

INTERPRETATION AND GENERAL CLAUSES ACT

**EUROPEAN ARREST WARRANT ACT 2004 (AMENDMENT NO. 2)
REGULATIONS 2014**

In exercise of the powers conferred upon it under section 23(g)(ii) of the Interpretation and General Clauses Act and all other enabling powers, and in order to further transpose Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) and to transpose, in part, Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the European Arrest Warrant Act 2004 (Amendment No. 2) Regulations 2014 and come into operation on the day of publication.

Amendments to Act.

2. The European Arrest Warrant Act 2004 (“the Act”) is amended in accordance with the provisions of these Regulations.

Amendments to section 2.

3. Section 2 of the Act is amended—

- (a) by inserting the following definition after the definition of “Central Authority in Gibraltar”—

““Eurojust” means that body established pursuant to Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA);” and

- (b) in the definition of “Framework Decision” by adding the words “(2002/584/JHA), as amended from time to time” after “between Member States”.

Section 5A.

4. After section 5 inset the following section—

“Urgency.

- 5A. A European arrest warrant must be dealt with and executed as a matter of urgency.”.

Section 7.

5. For section 7(1) substitute—

“7.(1) A European arrest warrant shall, in so far as is practicable, be in the form set out in Schedule 1 and shall specify—

- (a) the identity and the nationality of the person in respect of whom it is issued;
- (b) the name, address, telephone number, fax number and e-mail address of the judicial authority that issued the European arrest warrant;
- (c) having particular regard to article 2 of the Framework Decision the offence to which the European arrest warrant relates including the nature and classification

- under the law of the issuing State of the offence concerned;
- (d) evidence of a conviction, sentence or detention order is immediately enforceable against the person, or that a warrant for his arrest or other order of a judicial authority in the issuing State having the same effect, and falling within the scope of articles 1 and 2 of the Framework Decision, has been issued in respect of that offence;
 - (e) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence;
 - (f)
 - (i) the penalties to which that person would, if convicted of the offence specified in the European arrest warrant, be liable;
 - (ii) where that person has been convicted of the offence specified in the European arrest warrant but has not yet been sentenced, the penalties to which he is liable in respect of the offence; or
 - (iii) where that person has been convicted of the offence specified in the European arrest warrant and a sentence has been imposed in respect thereof, the penalties of which that sentence consists; and
 - (g) if possible, other consequences of the offence.”.

Section 8.

6. In section 8 of the Act—

- (a) in subsection (1) for the words “that language” substitute “English”;

- (b) in subsection (2) for the words “that language” substitute “into English”;
- (c) at the end of subsection (3) insert “or if the location of the requested person is known, by delivering it directly to the magistrates’ court”;
- (d) by substituting the following subsections for subsections (4) and (5)–

“(4) Notwithstanding subsection (3), an issuing judicial authority shall be deemed to have complied with subsection (1) if copies of–

- (a) the European arrest warrant; and
- (b) where appropriate, a translation thereof,

are transmitted by the issuing judicial authority to the Central Authority in Gibraltar by means of a facsimile machine or any other secure means capable of producing written records under conditions allowing for the Central Authority in Gibraltar or to the magistrates’ court to establish its authenticity.

(5) Notwithstanding subsection (3), an issuing judicial authority shall be deemed to have complied with subsection (2) if copies of–

- (a) such undertakings as are required under this Act; and
- (b) where appropriate, translations thereof,

are transmitted, by the issuing judicial authority to the Central Authority in Gibraltar by means of a facsimile machine or any other secure means capable of producing written records under conditions allowing for the Central Authority in Gibraltar or to the magistrates’ court to establish its authenticity.”;

- (e) in subsection (6) delete “facsimile” on both occasions that word appears;
- (f) in subsection (8) insert “transmitted in accordance with this section” after the first instance of the word “document”;
- (g) in subsection (9) delete the word “facsimile”;
- (h) for subsection (10) substitute the following–

“(10) If a European arrest warrant or a document purporting to be a European arrest warrant is received by an authority which is not competent to act upon it, the authority must automatically forward the European arrest warrant or the document purporting to be a European arrest warrant to the Central Authority in Gibraltar and inform the issuing judicial authority accordingly.”.

Section 8A.

7. The Act is amended by inserting the following section after section 8–

“Guarantees from the issuing State prior to execution.

8A.(1) The execution of a European arrest warrant transmitted in accordance with section 8 is subject to the conditions in subsections (2) and (3).

(2) Where the offence in the European arrest warrant is punishable by a custodial life sentence or life-time detention order, the issuing State must have provisions in its legal system for–

- (a) a review of the penalty or measure imposed, either on request or within 20 years of the imposition of the penalty or measure; or
- (b) an application of measures of clemency which the person is entitled to apply for under the law or practice of the issuing State,

aiming at non-execution of the penalty or measure.

(3) Where the person named in the European arrest warrant is a Gibraltarian (as defined in section 4 of the Gibraltarian Status Act) or resident and he is to be surrendered to the issuing State, he must, after being heard, be returned to Gibraltar in order to serve a custodial sentence or detention order passed against him in the issuing State.”.

Section 9.

8. In section 9 of the Act—

- (a) in subsection (1) for “The Central” substitute “Subject to section 8A, the Central”;
- (b) in subsection (2) delete “A copy of the warrant, the facsimile copy of the warrant or the true copy of the warrant shall be given to the person arrested not later than 24 hours after his arrest.”;
- (c) after subsection (2) insert the following subsection—

“(2A) A copy of the European arrest warrant transmitted in accordance with section 8 must be given to the person arrested not later than 24 hours after his arrest.”.

Section 9A.

9. In section 9A(2)(b) of the Act for “, a facsimile copy of the warrant or a true copy of the warrant” substitute “transmitted in accordance with section 8,”.

Section 10.

10. In section 10 of the Act–

- (a) in the frontispiece for “a facsimile copy of the warrant or a true copy of the warrant” substitute “transmitted in accordance with section 8”;
- (b) in paragraph (c) for “that he has the” substitute “of the European arrest warrant and of its contents and of his”.

Section 11.

11. In section 11 of the Act–

- (a) in subsection (1)(a) for “or a facsimile or true copy thereof” substitute “transmitted in accordance with section 8”;
- (b) before subsection (3) insert the following subsections–

“(2A) Where a person is brought before the magistrates’ court under section 10, he may consent, if appropriate, at the same time as giving consent for his surrender under subsection (1), renounce his entitlement to the ‘speciality rule’.

(2B) Where a person renounces his entitlement to the ‘speciality rule’ under subsection (2A), the magistrates’ court must, if it is satisfied that–

- (a) the European arrest warrant transmitted in accordance with section 8 has been executed in accordance with the provisions of this Act;
- (b) the surrender of the person is not prohibited by Part 3;
- (c) the person voluntarily renounces his entitlement to the ‘speciality rule’ and is aware of the consequences of his renunciation; and

- (d) the person has obtained, or been given the opportunity of obtaining or being provided with, professional legal advice before renouncing his entitlement to the 'speciality rule',

make an order in addition to, or included in, the order made under subsection (1) directing that the person has renounced his entitlement to the 'speciality rule' referred to in section 15 (article 27(2) of the Framework Decision).";

- (c) in subsection (3)(a) delete "and" after the semicolon;

- (d) after subsection (3)(a) insert the following paragraph—

“(aa) if appropriate, record in writing that the person concerned renounced his entitlement to the 'speciality rule' and;”;

- (d) after subsection (3) insert the following subsections—

“(3A) The order made by the magistrates' court under subsection (1) should be made within 10 days of the giving of consent by the person brought under section 10.

(3B) Where the time limit in subsection (3A) cannot be met the magistrates' court—

- (a) must immediately inform the issuing judicial authority giving reasons for the delay; and

- (b) may extend the time limits by a further 30 days.

(3C) Where a court decides not to make an order under this section—

- (a) it must give reasons for its decision; and

- (b) the person must, subject to subsection (3D), be released from custody.

(3D) Subsection 3C must not apply if–

(a)

(i) the person has been sentenced to a term of imprisonment for an offence of which he was convicted in Gibraltar;

(ii) on the date on which he would, but for this subsection, be entitled to be released under subsection (3C), all or part of the term of imprisonment remains unexpired; and

(iii) the person is required to serve all or part of the remainder of that term of imprisonment; or

(b)

(i) the person has been charged with or convicted of an offence in Gibraltar; and

(ii) on the date on which he would, but for this paragraph, be entitled to be released from custody under subsection (3C), he is required to be in custody by virtue of having been remanded in custody pending his being tried, or the imposition of sentence, in respect of that offence.”;

(f) delete subsections (4) to (6).

Sections 11A and 11B.

12. After section 11 of the Act insert–

“Revocation of consent or renunciation.

11A.(1) Consent and, if appropriate, renunciation of the ‘speciality rule’ may be revoked by the person named in a European arrest warrant before a magistrates’ court.

(2) Subsection (1) applies the court must–

- (a) record in writing that the person concerned has revoked his consent to his being surrendered to the issuing State concerned or his renunciation of his entitlement to the 'speciality rule';
- (b) and make such order as it deems necessary for the surrender of the person to the issuing State including an order to commit the person to a prison (provided that, if the person is not more than 21 years of age, he shall be held on remand terms) pending the carrying out of the terms of the order.

(3) Where consent is revoked or if appropriate the renunciation of the 'speciality rule' is revoked by the person named in the European arrest warrant, the period of time between the date of consent and the date of revocation shall not be taken into account in establishing the time limits laid down in sections 11(3A), 11(3B), 12(3A) and 12(3B).

Time limits for surrender of the person.

11B.(1) A person to whom an order for the time being in force under section 11 applies must be surrendered to the issuing State concerned—

- (a) as soon as possible on a date agreed between the authorities concerned; and
- (b) no later than 10 days after the order made under section 11(1).

(2) If a person to whom an order for the time being in force under section 11 applies is not surrendered in accordance with subsection (1), due to circumstances beyond the control of the requesting and the executing authorities, the magistrates' court must—

- (a) immediately contact the issuing judicial authority and agree on a new surrender date, and
- (b) surrender the person within 10 days of the date agreed under paragraph (a).

- (3) The surrender of a person to whom an order for the time being in force under section 11 applies may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that surrender at that time would manifestly endanger the person's life or health.
- (4) The surrender of a person which has been postponed under subsection (3) must be executed as soon as the grounds postponing the surrender have ceased to exist, and the magistrates' court must-
- (a) immediately inform the issuing judicial authority and agree on a new surrender date, and
 - (b) surrender the person within 10 days of the date agreed under paragraph (a).
- (5) If a person to whom an order for the time being in force under section 11 applies is not surrendered to the issuing State in accordance with subsections (1), (2), (3) and (4) he must, subject to subsection (6), be released from custody immediately upon the expiration of the days referred to in subsections (1),(2), (3) and (4).
- (6) Subsection (5) does not apply if-
- (a)
 - (i) the person has been sentenced to a term of imprisonment or an offence of which he was convicted in Gibraltar;
 - (ii) on the date on which he would, but for this subsection, be entitled to be released from custody under subsection (5), all or part of that term of imprisonment remains unexpired; and
 - (iii) the person is required to serve all or part of the remainder of that term of imprisonment; or
 - (b)

- (i) the person has been charged with or convicted of an offence in Gibraltar; and
- (ii) on the date on which he would, but for this paragraph, be entitled to be released from custody under subsection (5) he is required to be in custody by virtue of having been remanded in custody pending his being tried, or the imposition of a sentence, in respect of that offence.”.

Section 12.

13. In section 12 of the Act–

- (a) in subsection (1) for “upon such date as is fixed under section 10” substitute “after hearing that person”;
- (b) for subsection (2)(a) substitute–
 - “(a) the European arrest warrant, transmitted in accordance with section 8 and, where appropriate, such undertakings or statements as are required under this Act are provided to the court;”;
- (c) in subsection (2)(d) for “, or a facsimile or true copy thereof” substitute “transmitted in accordance with section 8”;
- (d) after subsection (3) insert the following subsections–
 - “(3A) In fixing a date under section 10 the court shall have regard to the requirement that an order under subsection (1) should be made within a period of 60 days after the arrest of the requested person.
 - (3B) Where the order referred to in subsection (3A) cannot be made within the period referred to therein the magistrates’ court–
 - (a) must immediately inform the issuing judicial authority giving reasons for the delay; and

- (b) may extend the time limit by a further 30 days.”.
- (d) delete subsections (6) and (7).

Sections 12A and 12B.

14. After section 12 of the Act insert the following sections-

“Time limits exceeded.

- 12A. Where in exceptional circumstances the magistrates’ court exceeds the time limits laid down in sections 11(3A), 12(3B), 11(3B) and 12(3B) in relation to a decision as to the execution of a European arrest warrant, the magistrates’ court must ensure that Eurojust is informed and give reasons for the delay.

Material conditions for surrender to remain fulfilled.

- 12B. Where the magistrates’ court has not taken a final decision on the surrender of a person under a European arrest warrant transmitted in accordance with section 8, the magistrates’ court must ensure that the material conditions necessary for effective surrender of the person remain fulfilled.”.

Sections 13 and 14.

15. For sections 13 and 14 of the Act substitute the following sections-

“Request for additional information by the magistrates’ court.

13. In proceedings to which this Act applies the magistrates’ court may, if of the opinion that the documentation or information provided by the issuing Member State is not sufficient to enable it to decide on surrender of the requested person, require the issuing Member State to provide it with such additional documentation or information as necessary (in particular with respect to articles 3 to 5 and article 8 of the Framework Decision), as a matter of urgency and within such period as it may

specify taking account of the time limits in sections 11(3A), 12(3A), 11(3B) and 12(3B).

Additional useful information - received.

- 13A. The magistrates' court may at any time make use of additional information received from the issuing State relating to a previous request pursuant to a European arrest warrant transmitted in accordance with section 8.

Situation pending the decision.

- 14A.(1) Where a European arrest warrant transmitted in accordance with section 8 was issued in order to conduct a criminal prosecution, the magistrates' court must either—

(a) agree to the requested person be heard in accordance with section 14B, or

(b) agree to the temporary transfer of the requested person.

- (2) Where a temporary transfer under subsection (1)(b) is decided upon by the magistrates' court, both the magistrates' court and the issuing judicial authority must by mutual agreement decide the conditions and the duration of the temporary transfer of the person requested in the European arrest warrant.
- (3) In deciding the conditions and duration of the temporary transfer referred to in subsection (2), the requested person must be able to return to Gibraltar in order to attend hearings concerning him as part of the surrender procedure.

Hearing the person pending the decision.

- 14B.(1) A hearing for the purposes of section 14A shall be before a magistrates' court.

- (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 pursuant to article 19(1) of the Framework Decision.

- (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 pursuant to article 19(2) of the Framework Decision.
- (4) In order to ensure the proper application of this section, and in accordance with article 19(3) of the Framework Decision, the Chief Justice may assign another judicial authority to take part in the hearing of the requested person.”.

Section 15.

16. In section 15(4)(c)(i) of the Act after the words “liberty being so restricted” insert “(he renounces the speciality rule)”.

Section 15A.

17. After section 15 of the Act insert the following section—

“Incoming request for consent for prosecution.

- 15A.(1) An issuing judicial authority may request the magistrates' court to consent to a person named in a European arrest warrant being proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his personal freedom, for an offence committed before his surrender other than the offence specified in the European arrest warrant or an offence disclosed by the same facts as the offence specified in that warrant by the issuing State in respect of that person.
- (2) Where the Central Authority or magistrates' court receives a request for consent as referred to subsection (1) for a person named in a European arrest warrant, transmitted in accordance with section 8, from the issuing judicial authority in a Member State-

- (a) consent must be given where the offence listed in the European arrest warrant is itself subject to surrender in accordance with the provisions of the Framework Decision;
 - (b) consent must be refused on the grounds referred to in sections 28, 35, 30(1) and 32;
 - (c) consent may be refused on the grounds referred to in sections 27(2), 29, 30(2), 31, 33 and 33A.
- (3) The magistrates' court must make a decision as to consent within 30 days of receipt of the request referred to in subsection (1)."

Section 16.

18. In section 16 of the Act–

- (a) at the end of the section heading insert “– **subsequent surrender**”;
- (b) in subsection (3)(b) for “subsection (4)” substitute “section 16A”;
- (c) delete subsection (4).

Section 16A.

19. After section 16 of the Act insert the following section–

“Incoming request for consent for subsequent surrender.

- 16A.(1) An issuing judicial authority may request the magistrates' court's consent to a person named in a European arrest warrant being surrendered by the issuing State concerned to another State pursuant to a European arrest warrant issued by a judicial authority in that other State in respect of that person.
- (2) Where the Central Authority or magistrates' court receives a request for consent as referred to in subsection (1) for a person named in a European arrest warrant, transmitted in

accordance with sections 7 and 8, from the issuing judicial authority in a State—

- (a) consent must be given where the offence listed in the European arrest warrant is itself subject to surrender in accordance with the provisions of the Framework Decision;
 - (b) consent must be refused on the grounds referred to in sections 28, 35, 30(1) and 32;
 - (c) consent may be refused on the grounds referred to in sections 27(2), 29, 30(2), 31, 33 and 33A.
- (3) The magistrates' court must make a decision as to consent within 30 days of receipt of the request referred to in subsection (1)."

Section 17.

20. At the end of the section heading to section 17 of the Act insert “—**subsequent extradition**”.

Sections 17A and 17B.

21. After section 17 of the Act insert the following sections—

“Postponed or conditional surrender.

- 17A.(1) The magistrates' court may, after deciding to execute the European arrest warrant, postpone surrender of the requested person so that he may be prosecuted in Gibraltar or, if he has already been sentenced, so that he may serve in Gibraltar a sentence passed for an act other than that referred to in the European arrest warrant.
- (2) Instead of postponing the surrender, the magistrates' court may temporarily surrender the requested person to the issuing State subject to the receipt of an undertaking from the issuing judicial authority, or any authority competent to issue such an undertaking in the issuing State, as set out in subsection (3).

- (3) An undertaking made in accordance with subsection (2) must—
- (a) be determined by mutual agreement between the magistrates' court and the issuing judicial authority, or any authority competent to issue such an undertaking in the issuing State;
 - (b) be in writing;
 - (c) be binding on all the relevant authorities in the issuing State; and
 - (d) include provision that the person be returned to the Gibraltar authorities on conclusion of those proceedings,

and may include—

- (e) such other provision as the magistrates' court deems appropriate including but not limited to a requirement that the person be kept in custody until the conclusion of the proceedings against him for the offence and any other offence in respect of which he is permitted to be dealt with in the issuing State.

Information on period of detention.

- 17B. Where a person is surrendered pursuant to a European arrest warrant, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the magistrates' court to the issuing judicial authority at the time of the surrender.”.

Section 18.

22. For section 18 of the Act substitute—

“Search and seizure powers and handing over of property.

- 18.(1) The powers to enter and search provided for in the Criminal Procedure and Evidence Act 2011 shall be

available in connection with a European arrest warrant and for the purposes of satisfying section 12(a) of that Act the matters set out in the European arrest warrant shall be deemed to constitute an indictable offence.

- (2) Any property seized under pursuant to subsection (1) must, if a person is surrendered under this Act, be handed over to any person duly authorised by the issuing State to receive it, as soon as may be after the surrender of the person, and the said property must be so handed over notwithstanding that the surrender of the person cannot be carried out by reason of the death or escape from custody of the person claimed.
- (3) Any property seized pursuant to subsection (1) may, if criminal proceedings to which the property relates are pending in Gibraltar, be retained in Gibraltar for the purposes of those proceedings or may, if the Central Authority after consultation with the Attorney General so directs, be handed over to the issuing State subject to the issuing State agreeing to return the property.
- (4) This section shall not operate to abrogate any rights lawfully vested in the Crown in right of the Government of Gibraltar, or any person, over any property to which this section applies and, where any such rights exist, the property shall not be handed over unless an undertaking is given by the issuing State that it will return the property as soon as practicable after the trial of the person surrendered and without charge to the Government or person in whom such rights vest.”.

Section 20.

23. In section 20 of the Act—

- (a) for subsection (1) substitute—

“20.(1) Subject to subsection (1A), transit through Gibraltar of a person being conveyed from an executing State to an issuing State, upon his surrender pursuant to a European arrest warrant, shall be permitted where the Central Authority receives a

request in that behalf from the issuing State and where the issuing State provides the Central Authority with the following information–

- (a) the identity and nationality of the person to whom the European arrest warrant applies;
- (b) information showing that a European arrest warrant has been issued by the issuing State in respect of the person;
- (c) the nature and legal classification under the law of the issuing State of the offence to which the European arrest warrant relates; and
- (d) the circumstances in which the offence specified in the European arrest warrant was committed or is alleged to have been committed, including the date and place of its commission.

(1A) The Central Authority may–

- (a) refuse the transit through Gibraltar of a Gibraltarian or a person who is a resident of Gibraltar when the transit of that person is requested for the purpose of the execution of a custodial sentence or detention order under the European arrest warrant, or
- (b) allow transit through Gibraltar of a Gibraltarian or a person who is a resident of Gibraltar on the condition that the requested person, after being heard in the issuing State, is returned to Gibraltar to serve the custodial sentence or detention order passed against him in the issuing State.

(1B) A transit request through Gibraltar and the information set out in subsection (1) may be addressed to the Central Authority by any means capable of producing a written record.

(1C) When responding to a transit request the Central Authority must notify its decision by the same procedure as the request received in subsection (1B).”.

- (b) in subsection (3)(a) substitute “Gibraltar International Airport” on both occasions “Gibraltar Airport” appears.

Sections 22A and 22B.

24. After section 22 of the Act insert the following sections—

“Competing international obligations.

22A.(1) This Act shall not prejudice the obligations of the Central Authority and magistrates’ court where the person named in the European arrest warrant has been extradited to Gibraltar from a third State and the person is protected by speciality conditions in the extradition agreement.

(2) Where a person has been extradited to Gibraltar from a third State and a Member State requests that person’s surrender under a European arrest warrant, the Central Authority must take all necessary measures to request forthwith the consent of the third State, which extradited the person, to surrender the person to the Member State which issued the European arrest warrant.

(3) Following the request referred to in subsection (2) and pending the decision of the third State, the Central Authority shall ensure the material conditions necessary for effective surrender remain fulfilled.

(4) The time limits referred to in sections 11(3A), 12(3A), 11(3B) and 12(3B) shall not start to run until the speciality rules cease to apply to the person referred to in this section.”.

Notification of decision.

22B. The magistrates’ court shall notify the judicial authority immediately of the decision on the action to be taken under

this Part on the European arrest warrant transmitted in accordance with section 8.”.

Section 24.

25. In section 24 of the Act—

- (a) for subsection (2) substitute—
 - (2) A European arrest warrant shall, in so far as is practicable, be in the form set out in Schedule 1 and shall specify—
 - (a) the identity and the nationality of the person to whom it relates;
 - (b) the name, address, telephone number, fax number and e-mail address of the magistrates’ court;
 - (c) the nature and legal classification of the offence to which the European arrest warrant relates including a description thereof and including whether or not the offence corresponds to a description of offence set out in Schedule 2;
 - (d) evidence of a conviction, sentence or detention order is immediately enforceable against the person, or that a warrant for his arrest has been issued in respect of that offence;
 - (e) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence; and
 - (f)
 - (i) the penalties to which the person named in the European arrest warrant would, if

convicted of the offence to which the European arrest warrant relates, be liable;

(ii) where the person named in the European arrest warrant has been convicted of the offence specified therein and a sentence has been imposed in respect thereof, the penalties of which that sentence consists; or

(iii) where the person named in the European arrest warrant has been convicted of the offence specified therein but has not yet been sentenced, the penalties to which he is liable in respect of the offence; and

(g) if possible, other consequences of the offence.”;

(b) after subsection (3) insert the following subsection–

“(4) Where the executing State does not accept a European arrest warrant in English, a translation in that State’s official language or in a language that it has declared it will accept, must accompany the European arrest warrant.”.

Sections 24A and 24B.

26. After section 24 of the Act insert the following sections–

“Person requested – trial in absentia.

24A.(1) Where the magistrates’ court receives a request from an executing authority that the person named in a European arrest warrant issued by the magistrates’ court in accordance with article 4a(1)(d) of the Framework Decision has requested a copy of the judgment prior to his surrender, the magistrates’ court must provide it to the person named in the European arrest warrant via the executing authority.

(2) A request under subsection (1) is for information purposes only and must not–

- (a) delay the surrender procedure;
- (b) delay the execution of the European arrest warrant;
- (c) be regarded as formal service of the judgment; and
- (d) actuate any time limits applicable for requesting a retrial or appeal.

Person surrendered – review of detention.

24B. Where a person is surrendered under the provisions of article 4a(1)(d) of the Framework Decision 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.

Additional useful information.

24C. Where the magistrates' court has requested the arrest and surrender of a person pursuant to a European arrest warrant in accordance with section 24 it may at any time forward any additional useful information to the executing judicial authority in that State.

Sections 25A and 25B.

27. For sections 25A and 25B of the Act substitute the following sections–

“Effects of the surrender (speciality).

25A.(1) Subject to subsections (2) and (3), where a person is surrendered to the Gibraltar authorities pursuant to a European arrest warrant, he shall not be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his personal freedom, for an offence committed before his surrender other than the offence specified in the European

arrest warrant or an offence disclosed by the same facts as the offence specified in that warrant.

- (2) Subsection (1) does not apply in the following cases—
- (a) when the person having had the opportunity to leave Gibraltar has not done so within 45 days of his or her final discharge, or has returned to Gibraltar after leaving it;
 - (b) where the offence is not punishable on conviction by a term of imprisonment or detention;
 - (c) in circumstances where upon conviction he is liable to a term of imprisonment or detention and such other penalty as does not involve a restriction of his personal liberty, and the magistrates' court is satisfied that the said other penalty only will be imposed should he be convicted of the offence concerned;
 - (ca) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or measure in lieu thereof, even if the penalty or a measure may give rise to a restriction of his personal liberty;
 - (d) where the person consented to be surrendered and that person, where appropriate and at the appropriate time, renounced the speciality rule in accordance with the Framework decision;
 - (e) where, after the surrender, the person expressly and voluntarily renounces entitlement to the speciality rule with regard to specific offences committed or alleged to have been committed by him before his surrender.
 - (f) where, the executing judicial authority which surrendered the person has consented to the proceedings, sentencing, detention or other restriction following a request to it by the magistrates' court.

- (3) Renunciation of the speciality rule, in accordance with subsection (2)(e), must be—
- (a) made before the magistrates' court;
 - (b) recorded by the magistrates' court;
- and the person must—
- (c) voluntarily renounce the speciality rule after;
 - (d) having obtained, or having been given the opportunity of obtaining or being provided with, professional legal advice before renouncing; and
 - (e) be aware of the consequences of his so renouncing the speciality rule.
- (4) The Central Authority may request consent from the executing judicial authority, in accordance with section 25A(2)(f), by making an application to the executing authority in the executing State—
- (a) by or on behalf of the Attorney General; and
 - (b) accompanied by the information in section 24(2) and, if need be, a translation into the official language of the executing State or a language that the executing State has declared it will accept.

Effects of the surrender (subsequent surrender or extradition).

25B(1) Subject to subsection (2), where a person is surrendered to the Gibraltar authorities pursuant to a European arrest warrant, that person shall not be—

- (a) surrendered to a State other than the executing State pursuant to a European arrest warrant issued by a judicial authority in that other State in respect of an offence committed or alleged to have been committed before his surrender to the Gibraltar authorities; or

- (b) extradited to a third country in respect of an offence committed or alleged to have been committed before his surrender to the Gibraltar authorities without the consent of the executing judicial authority which surrendered the person.
- (2) Subsection (1) does not apply in any of the following cases—
- (a) when the person having had the opportunity to leave Gibraltar has not done so within 45 days of his final discharge, or has returned to Gibraltar after leaving it;
 - (b) where, after the surrender to the Gibraltar authorities, the person expressly and voluntarily renounces entitlement to the speciality rule with regard to specific offences committed or alleged to have been committed by him before his surrender;
 - (c) where the person is not subject to the speciality rule in accordance with section 25A(2)(a), (d), (e) or (f).
- (3) Renunciation of the speciality rule, in accordance with subsection (2)(b), must be—
- (a) made before the magistrates' court;
 - (b) recorded by the magistrates' court;
- and the person must—
- (c) voluntarily renounce the speciality rule after;
 - (d) having obtained, or having been given the opportunity of obtaining or being provided with, professional legal advice before renouncing; and
 - (e) be aware of the consequences of his so renouncing the speciality rule.

Request for the handing over of property.

25C.(1) Where the magistrates' court has issued a European arrest warrant under section 24 it may request that the executing judicial authority seize and hand over property which—

- (a) may be required as evidence; or
 - (b) has been acquired by the person named in the European arrest warrant as a result of the offence.
- (2) Any rights which the executing State or a third party may have in relation to property handed over in accordance with subsection (1) are preserved.
- (3) The Central Authority must return property handed over under subsection (1), without charge to the executing State, after the criminal proceedings have concluded.”.

Section 30.

28. In section 30 of the Act—

- (a) in subsection (1) after the words “in Gibraltar or a State” insert “provided that, where a sentence has been handed down, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State”;
- (b) in section (2)(a) after the words “the person” insert “is serving or”

Section 31.

29. In section 31 of the Act for the words “nolle prosequi in,” substitute “nolle prosequi in or discontinued”.

Section 32.

30. In section 32 of the Act—

- (a) at the end of the section heading insert “**by reason of age**”

- (b) after the words “could not be proceeded against” insert “in Gibraltar”.

Section 33A.

31. After section 33 of the Act insert the following section—

“Exceptions to duty to surrender: execution of sentence.

- 33A. A person shall not be surrendered under this Act if the European arrest warrant has been issued for the purposes of the execution of a custodial sentence or detention order and—
- (a) the person named in the European arrest warrant is either—
- (i) a Gibraltarian;
- (ii) a resident of Gibraltar; or
- (iii) staying in Gibraltar; and
- (b) the court makes an order requiring the person to serve the period of the sentence in accordance with the law of Gibraltar.”.

Section 34 and 34A.

32. For section 34 of the Act substitute the following sections—

“Exceptions to duty to surrender: trial in absentia.

- 34.(1) Where the person named in the European arrest warrant did not appear at the trial in which he has been sentenced to a term of imprisonment or detention, that person shall not be surrendered unless the procedural requirements in subsection (2) have been complied with.
- (2) The requirements referred to in subsection (1) are—
- (a) that in due time—

- (i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the enforceable judgment, or by other means he actually received official information of the scheduled date and place of the trial in such a way that it was unequivocally established that he was aware of the trial; and
- (ii) was informed that an enforceable judgment may be handed down in his absence; or
- (b) being aware of the scheduled trial, had given a mandate to a legal representative, either appointed by himself or by the State, to defend him at the trial and was in fact defended by that legal representative at the trial; or
- (c) after being served with the enforceable judgment and being expressly informed about 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—
 - (i) he expressly stated that he does not contest the judgment; or
 - (ii) he did not request a retrial or appeal within the applicable time; or
- (d) was not personally served with the enforceable judgment but—
 - (i) 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

- (ii) he will be informed of the time frame within which he has to request such a retrial or appeal, as mentioned in the European arrest warrant.
- (3) Where subsection (2)(d) applies and the person named in the European arrest warrant has not previously received any official information about the existence of the criminal proceedings against him, he may, when being informed of the content of the European arrest warrant, request to receive a copy of the enforceable judgment before being surrendered.
- (4) Where the issuing authority is informed of the request under subsection (3) the judgment shall be provided to the person sought via the executing authority.
- (5) A request under subsection (3) is for information purposes only and must–
 - (a) not delay the surrender procedure;
 - (b) not delay the execution of the European arrest warrant;
 - (c) not be regarded as formal service of the judgment; and
 - (d) not actuate any time limits applicable for requesting a retrial or appeal.

Exceptions to duty to surrender: withdrawal of European arrest warrant.

- 34A.(1) The following provisions of this section apply if at any time in the relevant period the magistrates' court is informed by the issuing authority that a European arrest warrant issued in respect of a person has been withdrawn.
- (2) The relevant period is the period–
 - (a) starting when the person is first brought before the appropriate judge following his arrest under this Act; and

- (b) ending when the person is surrendered in pursuance of the warrant or discharged.
- (3) The magistrates' court must order the person's discharge in a case to which subsections (2) and (3) apply.
- (4) If the person is not before the magistrates' court at the time the court orders his discharge, the court must inform him of the order as soon as practicable."

Section 35.

33. For section 35 of the Act substitute the following section—

“Exceptions to duty to surrender: immunity and waiver.

- 35.(1) Subject to subsection (2), a person who, by virtue of his holding any office or other position, is under the law of Gibraltar immune from prosecution for any offence shall not while he holds such office or position be surrendered under this Act.
- (2) As from the day the magistrates' court is informed that a person has waived the privilege or immunity referred to in subsection (1) the time limits referred to in sections 11(3A), 12(3A), 11(3B) and 12(3B) shall apply to a person who is requested under a European arrest warrant and the Central Authority must ensure that the material conditions necessary for effective surrender are fulfilled when the requested person referred to in subsection (1) no longer enjoys such a privilege or immunity.
- (3) Where the power to waive a privilege or immunity lies with an authority in Gibraltar, the magistrates' court must, when seeking to execute a European arrest warrant transmitted in accordance with section 8, request that the authority waive the privilege or immunity forthwith.
- (4) Where the power to waive a privilege or immunity lies with an authority of another State or international organisation and the magistrates' court has issued the European arrest warrant in accordance with section 24, the

magistrates' court must make a request to the authority of the other State or international organisation that it waive the privilege or immunity preventing the execution of the European arrest warrant.”.

Section 49.

34. In section 49(2) for “hit” substitute “it”.

Part 6.

35. After section 51 of the Act insert the following Part–

“PART 6

EXPENSES OF EXECUTION

Expenses incurred in relation to a European arrest warrant.

- 52.(1) Expenses incurred in Gibraltar in relation to the execution of a European arrest warrant in Gibraltar may not be claimed from the requesting State.
- (2) The Government shall not be liable for expenses incurred in a State in relation to that State's execution of a European arrest warrant issued under this Act.
- (3) Expenses falling outside the matters referred to in subsections (1) and (2) shall be borne by the authorities issuing the European arrest warrant.”.

Schedule 1.

36. For Schedule 1 to the Act substitute–

“SCHEDULE 1

Section 36

FORM OF EUROPEAN ARREST WARRANT

EUROPEAN ARREST WARRANT ⁽¹⁾

This warrant has been issued by a competent judicial authority. I request

that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

⁽¹⁾This warrant must be written in, or translated into, one of the official languages of the executing State, when that State is known, or any other language accepted by that State.

<p>(a) Information regarding the identity of the requested person:.....</p> <p>Name:.....</p> <p>Forename(s):.....</p> <p>Maiden name, where applicable:</p> <p>Aliases, where applicable:.....</p> <p>Sex:.....</p> <p>Nationality:.....</p> <p>Date of birth:.....</p> <p>Place of birth:.....</p> <p>Residence and/or known address:</p> <p>Language(s) which the requested person understands (if known):</p> <p>Distinctive marks/description of the requested person:</p> <p>.....</p> <p>Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)</p>
<p>(b) Decision on which the warrant is based:</p> <p>1. Arrest warrant or judicial decision having the same effect:.....</p> <p>Type:.....</p> <p>2. Enforceable judgement:.....</p> <p>.....</p> <p>Reference:.....</p> <p>.....</p>

<p>(c) Indications on the length of the sentence:</p> <p>1. Maximum length of the custodial sentence or detention order which may</p>

be imposed for the offence(s):
.....
.....
.....
2. Length of the custodial sentence or detention order imposed:
.....
.....
.....
Remaining sentence to be served:
.....
.....
.....

(d) Indicate if the person appeared in person at the trial resulting in the decision:
1. Yes, the person appeared in person at the trial resulting in the decision.
2. No, the person did not appear in person at the trial resulting in the decision.
3. If you have ticked the box under point 2, please confirm the existence of one of the following:
 3.1a. the person was summoned in person on.....(day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;
OR
 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial.
OR
 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;
OR
 3.3. the person was served with the decision on (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she 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 decision being reversed, and

- the person expressly stated that he or she does not contest this decision,

OR

- the person did not request a retrial or appeal within the applicable time frame;

OR

- 3.4. the person was not personally served with the decision, but
 - the person will be personally served with this decision without delay after the surrender, and
 - when served with the decision, the person will be expressly informed of his or her right to retrial or appeal, in which he or she 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 decision being reversed, and
 - the person will be informed of the time frame within which he or she has to request a retrial or appeal, which will be days.

4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above please provide information about how the relevant condition has been met:

.....

.....

.....

.....

.....

(e) Offences:

This warrant relates to in total: offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

.....

.....

.....

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

.....

.....

.....

.....
.....
.....
I. If applicable, tick one or more of the following offences punishable in the issuing State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing State:

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting of currency, including the euro;
- computer-related crime;
- Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;

- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage;

II. Full description of offence(s) not covered by section I above:
.....
.....
.....

(f) Other circumstances relevant to the case (optional information):
(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)
.....
.....
.....

(g) This warrant pertains also to the seizure and handling over of property which may be required as evidence:
This warrant pertains also to the seizure and handling over of property acquired by the Requested person as a result of the offence:
Description of the property (and location) (if known):
.....
.....
.....

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:
- the legal system of the issuing State allows for a review of the penalty or measure imposed – on request or at least after 20 years – aiming at a non-execution of such penalty or measure,
and/or
- the legal system of the issuing State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing State, aiming at non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:
Official name:
Name of its representative ⁽¹⁾
.....
Post held (title/grade):
.....
File reference:
Address:
.....
Tel: (country code) (area/city code) (...)
Fax (country code) (area/city code) (...)

E-mail:..... Contact details of the person to contact to make necessary practical arrangements for the surrender:
--

⁽¹⁾ In the different language versions a reference to the “holder” of the judicial authority will be included.

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants: Name of the central authority: Contact person, if applicable (title/grade and name): Address:..... Tel: (country code) (area/city code) (...) Fax (country code) (area/city code) (...) E-mail:

Signature of the issuing judicial authority and/or its representative: Name:..... Post held (title/grade):..... Date:..... Official stamp (if available)

”

Dated 1st December 2014.

G H LICUDI Q.C.,
Minister with responsibility for Justice,
for the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the European Arrest Warrant Act 2004 to further transpose Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) and to transpose, in part, Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

