

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4794 GIBRALTAR Thursday 17th December 2020

LEGAL NOTICE NO. 457 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019 STATE AID (REVOCATIONS AND AMENDMENTS) (EU EXIT) REGULATIONS 2020

In exercise of the powers conferred upon him by section 11 and paragraph 1(b) of Schedule 3 of the European Union (Withdrawal) Act 2019, the Minister has made the following Regulations-

Title.

1. These Regulations may be cited as the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020.

Commencement.

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

(2) Paragraphs 2(3), 6(8)(b) and (c), 6(9) and 7 of Schedule 1 come into force immediately after 1 January 2021.

Interpretation.

3. In these Regulations-

“EEA Agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;

“TFEU” means the Treaty on the Functioning of the European Union;

“Withdrawal Act” means the European Union (Withdrawal) Act 2019.

Cessation of Treaty rights.

4. Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which-

- (a) continue to be recognised and available in domestic law by virtue of section 7 of the Withdrawal Act; and
- (b) are derived from
 - (i) Article 107(1) or 108(3) of the TFEU;
 - (ii) Article 346(1) of the TFEU, so far as Article 346(1) relates to Article 107(1) or Article 108(3) of the TFEU;
 - (iii) Article 61(1) or 62(1) of the EEA agreement; or
 - (iv) Article 123 of the EEA agreement, so far as Article 123 relates to Article 61(1) or 62(1) of the EEA agreement;

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

Revocation of Annex to the EEA Agreement.

5. Annex 15 of the EEA agreement, so far as it forms part of domestic law by virtue of section 6(1) of the Withdrawal Act, is deleted.

Revocation of EU regulations.

6. The following Regulations, so far as they form part of domestic law by virtue of section 6(1) of the Withdrawal Act, are revoked—

- (a) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty;
- (b) Commission Regulation (EC) No 1627/2006 of 24 October 2006 amending Regulation (EC) No 794/2004 as regards the standard forms for notification of aid;
- (c) Commission Regulation (EC) No 1935/2006 of 20 December 2006 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty;
- (d) Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty;
- (e) Commission Regulation (EC) No 1147/2008 of 31 October 2008 amending Regulation (EC) No 794/2004 of 21 April 2004 implementing Council

Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, as regards Part III.10 of its Annex 1;

- (f) Commission Regulation (EC) No 257/2009 of 24 March 2009 amending Regulation (EC) No 794/2004 as regards the supplementary information sheet for notification of aid to fisheries and aquaculture;
- (g) Commission Regulation (EC) No 1125/2009 of 23 November 2009 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, as regards Part III.2, Part III.3 and Part III.7 of its Annex I;
- (h) Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest;
- (i) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid;
- (j) Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector;
- (k) Commission Regulation (EU) No 372/2014 of 9 April 2014 amending Regulation (EC) No 794/2004 as regards the calculation of certain time limits, the handling of complaints, and the identification and protection of confidential information;
- (l) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty;
- (m) Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;
- (n) Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector;
- (o) Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;

- (p) Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid;
- (q) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union;
- (r) Commission Regulation (EU) 2015/2282 of 27 November 2015 amending Regulation (EC) No 794/2004 as regards the notification forms and information sheets;
- (s) Commission Regulation (EU) 2016/246 of 3 February 2016 amending Annex I to Regulation (EC) No 794/2004 as regards the forms to be used for the notification of State aid in the agricultural and forestry sectors and in rural areas;
- (t) Commission Regulation (EU) 2016/2105 of 1 December 2016 amending Annex I to Regulation (EC) No 794/2004 as regards the form to be used for the notification of State aid to the fishery and aquaculture sector;
- (u) Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs;
- (v) Council Regulation (EU) 2018/1911 of 26 November 2018 amending Regulation (EU) 2015/1588 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid;
- (w) Commission Regulation (EU) 2018/1923 of 7 December 2018 amending Regulation (EU) No 360/2012 as regards its period of application;
- (x) Commission Regulation (EU) 2019/289 of 19 February 2019 amending Regulation (EU) No 702/2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union; and
- (y) Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments.

Revocation of EU decisions.

7.(1) The following decisions, so far as they form part of domestic law by virtue of section 6(1) of the Withdrawal Act, are revoked—

- (a) Council Decision (2010/787/EU) of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines;
- (b) Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest; and
- (c) any other EU decision which forms part of domestic law on and after IP completion day by virtue of section 6(1) of the European Union (Withdrawal) Act 2019 and is made under—
 - (i) the procedural regulation or predecessor legislation; or
 - (ii) Article 108(2) of the TFEU or Article 88(2) of the Treaty establishing the European Community.

(2) In this regulation “predecessor legislation” means—

- (a) Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid; and
- (b) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty; “procedural regulation” means Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.

Amendments to legislation.

8.(1) Schedule 1, which makes amendments to retained EU law, has effect.

(2) Schedule 1, Part 2, which makes amendments to other legislation, has effect.

Transitional and savings provisions.

9. Schedule 2, which contains transitional and savings provisions, has effect.

SCHEDULE 1

Amendments to retained EU law

PART 1

Amendments to EU regulations

Amendments to Regulation (EC) No 1184/2006.

1.(1) Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of and trade in certain agricultural products is amended in accordance with this paragraph.

(2) In Article 1, delete “and of Article 108(1) and (3)”.

(3) Delete Article 3.

Amendments to Regulation (EU) No 575/2013.

2.(1) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 is amended in accordance with this paragraph.

(2) In Article 31-

(a) in paragraph 1(b), for “are considered State aid by the Commission”, substitute “amount to financial support provided by the state”;

(b) in paragraph 1(c), for “pursuant to State aid-rules existing at the time”, substitute “amounting to financial support provided by the state in Gibraltar, or pursuant to state aid rules in a third country, at the time”.

(3) In Article 242(19), delete “subject to any applicable rules relating to State aid (as defined in the law of Gibraltar after 1 January 2021)”.

Amendment to Regulation (EU) No 1305/2013.

3.(1) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 is amended in accordance with this paragraph.

(2) Delete Article 81.

Amendment to Regulation (EU) No 1307/2013.

4.(1) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 is amended in accordance with this paragraph.

(2) Delete Article 13.

Amendment to Regulation (EU) No 1308/2013.

5.(1) Regulation 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) no 1037/2001 and (EC) No 1234/2007 is amended in accordance with this paragraph.

(2) Delete Article 211.

Amendments to Regulation (EU) No 1303/2013.

6.(1) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 is amended in accordance with this paragraph.

(2) In Article 37-

- (a) in paragraph (1), delete “State aid and”;
- (b) in paragraph (2), in point (b), delete “possible State aid implications,”;
- (c) in paragraph (4)-
 - (i) delete “without prejudice to applicable Union State aid rules, and”;
 - (ii) delete “within the limits of applicable Union State aid rules and”;
- (d) in paragraph (7), delete “applicable Union State aid rules shall be respected and”;
- (e) in paragraph (9), delete “, subject to applicable Union State aid rules,”;
- (f) delete paragraph (12).

(3) In Article 42(3), delete “State aid rules are complied with and that”.

- (4) In Article 43(a), delete paragraph (4).
- (5) In Article 61, delete paragraph (8).
- (6) In Article 62, delete “State aid and”.
- (7) In Article 65(8) delete point (e).
- (8) In Article 71-
 - (a) in paragraph (1), delete “or within the period of time set out in State aid rules, where applicable,”;
 - (b) in paragraph (2), delete the final sentence;
 - (c) delete paragraph (3).
- (9) In Annex 11, in the table in Part 2, delete row 5.

Amendment of Commission Regulation (EU) 808/2014.

7.(1) Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(11) is amended in accordance with this paragraph.

- (2) In Annex 1, delete paragraph 13.

Amendment to Regulation (EU) No 1144/2014.

8.(1) Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008(12) is amended in accordance with this paragraph.

- (2) Delete Article 27.

Amendments to Regulation (EU) 2019/943.

9.(1) Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) is amended in accordance with this paragraph.

- (2) In Article 5, in paragraph 2—
 - (a) in point (c)—

- (i) after “the Commission”, insert “before IP completion day”;
 - (ii) after “Articles 107, 108, and 109 TFEU”, insert “as those Articles had effect in EU law immediately before IP completion day”.
- (b) in the final sentence, delete “, without prejudice to Articles 107 and 108 TFEU,”.
- (3) In Article 12—
- (a) in paragraph 2, delete “Without prejudice to Articles 107, 108 and 109 TFEU,”;
 - (b) in paragraph 3, in the last sentence, delete “Without prejudice to Articles 107, 108 and 109 TFEU,”;
 - (c) in paragraph 4, delete “Without prejudice to Articles 107, 108 and 109 TFEU,”.
- (4) In Article 20, in paragraph 3, delete “as a part of the State aid process”.
- (5) In Article 21, in paragraph 1, delete “in accordance with Article 107, 108 and 109 of the TFEU”.

PART 2

Amendments to domestic legislation.

Amendments to the Financial Services (Recovery and Resolution) Regulations 2020.

1.(1) The Financial Services (Recovery and Resolution) Regulations 2020 is amended in accordance with this paragraph.

(2) In regulation 3, for the definition of “extraordinary public financial support” substitute-

““extraordinary public financial support” means financial assistance that is provided by the central bank in order to preserve or restore the viability, liquidity or solvency of a bank, a banking group company or a group which includes a bank, other than-

- (a) ordinary market assistance offered by the central bank on its usual terms, or
- (b) a liquidity facility which is provided –
 - (i) to a bank that is facing temporary liquidity problems but is solvent, and
 - (ii) by the central bank on its own initiative and on its own terms,

and for the purposes of this definition “group” has the meaning given in regulation 3;”.

Amendments to the Financial Services Act 2019.

2. In section 216(8) of the Financial Services Act 2019 delete “that complies with State aid rules”.

SCHEDULE 2

Claims before a court or tribunal relating to State aid infringement before 1 January 2021.

1.(1) In this paragraph “State aid breach” means a breach or alleged breach of-

- (a) the prohibition in Article 107(1) of the TFEU; and
- (b) the obligation in Article 108(3) of the TFEU.

(2) The cessation of the rights, powers, liabilities, obligations, restrictions, remedies and procedures provided for by regulation 4 and the revocations provided for by regulations 5,6 and 7 do not affect the ability of any person on or after IP completion day-

- (a) to continue any existing claim (or defence to such a claim) in relation to a State aid breach which occurred before 1 January 2021 in proceedings before a court or tribunal in Gibraltar; or
- (b) to begin any new claim (or defence to such a claim) in relation to a State aid breach which occurred before 1 January 2021 in proceedings before a court or tribunal in Gibraltar which the person could have made before 1 January 2021.

(3) If a person has acquired a right to begin proceedings from another person (whether by operation of law or otherwise), the reference in subparagraph (2)(b) to proceedings which a person could have made before 1 January 2021 includes proceedings which that other person could have begun before 1 January 2021.

Dated: 17th December 2020.

DR. J GARCIA,
Deputy Chief Minister.

EXPLANATORY MEMORANDUM

These Regulations are made in exercise of the powers in section 11 and paragraph 1(b) of Schedule 3 of the European Union (Withdrawal) Act 2019 (“The Act”) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK and Gibraltar from the European Union.

These Regulations make amendments to legislation in the field of State aid. The main amendments made by these Regulations are revoking direct EU legislation and Treaty provisions that will become retained EU law on 1 January 2021.

Regulation 4 provides that the rights, powers, liabilities, obligations, remedies and procedures relating to State aid which continue by virtue of section 7 of the European Union (Withdrawal) Act 2019 cease to be recognised and available in domestic law.

Regulation 5 revokes Annex 15 of the EEA agreement, regulations 6 and 7 revoke direct EU regulations and decisions insofar as they form part of domestic law by virtue of section 6 of the European Union (Withdrawal) Act 2019.

Regulation 8 introduces Schedules 1 and 2 which make consequential amendment to other retained EU law and Gibraltar domestic legislation and regulation 9 introduces Schedule 3 which makes transitional provision and saving.