SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5148   GIBRALTAR   Thursday 23rd May 2024

LEGAL NOTICE NO.87 OF 2024

EUROPEAN UNION (WITHDRAWAL) ACT 2019

NETWORK AND INFORMATION SYSTEMS (AMENDMENT)(EU EXIT) REGULATIONS 2024

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

Title.

1. These Regulations may be cited as the Network and Information Systems (Amendment) (EU Exit) Regulations 2024.

Commencement.

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

Amendment of Part 7 of the Civil Contingencies Act 2007.

3.(1)   Part 7 of the Civil Contingencies Act 2007 is amended in accordance with this regulation.

 (2) In section 32-

    (a)   in subsection (1), delete paragraph (c);

    (b)   in subsection (2)(a) for "Articles 13a and 13b of the Framework Directive" substitute "section 31 of the Communications Act 2006";

    (c)   in subsection (3)-

       (i)   for subparagraph (a) substitute "Part 5";

       (ii)   for subparagraph (b) substitute "the Communications (Combatting Child Pornography) Regulations 2013 or the Child Victims of Sexual Abuse and Exploitation Regulations 2013";

       (iii)   for subparagraph (c) substitute "the Crimes Act 2011";

(d) in subsection (4), for "the European Commission and relevant authorities in other Member States" substitute ", and any relevant European Union or United Kingdom authority";

(e) in subsection (6) before "sector-specific" in each place it occurs, insert "retained".

(3) In section 33 for "Regulation (EC) No 45/2001" substitute "the Gibraltar GDPR".

(4) In section 34 –

(a) in the definition of "digital service" after "services" insert "as it had effect immediately before 1 January 2021";

(b) delete the definition of "European Commission";

(c) delete the definition of "Framework Directive";

(d) in the definition of "network and information system", in paragraph (a) for "point (a) of Article 2 of the Framework Directive" substitute "section 2 of the Communications Act 2006";

(e) in the definition of "NIS Directive" after "European Union" insert "as it had effect immediately before 1 January 2021";

(f) in the definition of "online marketplace" for the words from "point (a) and in point (b)" to "(Directive on consumer ADR)" substitute "the Consumer (Alternative Dispute Resolution) Regulations 2015";

(g) in the definition of "representative" for "the European Union" substitute "Gibraltar" in both places it appears.

(5) In section 35, delete subsections (6), (12) and (13).

(6) Delete section 36(4).

(7) In section 37, delete subsections (5) to (7).

(8) In section 38-

(a) in subsection (5)-

(i) delete "ensure cross border co-operation and";

(ii) for "must" substitute "may if it considers it appropriate";

(iii) in paragraph (a) for "other Member States" substitute "any Member States or the United Kingdom".

    (b)   delete subsections (7) and (10).

(9) In section 39-

    (a)   in subsection (3), delete paragraphs (b) and (d);

    (b)   for subsection (4) substitute-

        "(4)   The Gibraltar CSIRT may co-operate with or participate in international co-operation networks (including the CSIRTs network) if the Gibraltar CSIRT considers it appropriate to do so.".

(10) Delete section 40(3).

(11) In section 42-

    (a)   for subsection (5) substitute-

        "(5)   On the basis of information in a notification under subsection (1), the Competent Authority may inform the relevant authorities in any affected Member States or the United Kingdom if the Competent Authority considers that the incident has a significant impact on the continuity of essential services in that Member State or the United Kingdom.";

    (b)   in subsection (8) delete "with other Member States".

(12) In section 43-

    (a)   in subsection (1), for "the European Union" substitute "Gibraltar";

    (b)   after subsection (6) insert -

        "(6A) The digital service provider must have regard to any relevant guidance published by the Competent Authority.";

    (c)   delete subsection (9);

    (d)   in subsection (10), for "subsection (9)" substitute "this Act";

    (e)   delete subsection (13);

    (f)   for subsections (15) and (16) substitute-

        "(15) The Competent Authority may give information and assistance to, and otherwise co-operate with, a competent authority in a Member State or in the United Kingdom if the Competent Authority considers that to do so would be in the interest of effective supervision of digital service

providers (whether inside or outside Gibraltar) including in the event of an incident notified under section 43(3).".

(13) Omit section 44 (2).

(14) In section 55 –

   (a) in subsection (1) delete "or the NIS Directive";

   (b) in subsection (2) delete "or the NIS Directive".

(15) In Schedule 3-

   (a) in paragraph (5) after "networks" insert "and the CSIRTs network";

   (b) in paragraph (6), delete point (e).

Retained direct EU legislation.

Commission Implementing Regulation (EU) 2018/151.

4.(1) Commission Implementing Regulation (EU) 2018/151 of 30 January 2018 laying down rules for application of Directive (EU) 2016/1148 of the European Parliament and of the Council as regards further specification of the elements to be taken into account by digital service providers for managing the risks posed to the security of network and information systems and of the parameters for determining whether an incident has a substantial impact is amended in accordance with this regulation.

 (2) In Article 2-

   (a) In paragraph 1, for "point (a) of Article 16(1) of Directive (EU) 2016/1148" substitute "section 43(2)(c)(i) of the Civil Contingencies Act 2007";

   (b) in paragraph 2, for "point (b) of Article 16(1) of Directive (EU)2016/1148" substitute "section 43(2)(c)(ii) of the Civil Contingencies Act 2007";

   (c) in paragraph 3, for "point (c) of Article 16(1) of Directive (EU) 2016/1148" substitute "section 43(2)(c)(iii) of the Civil Contingencies Act 2007";

   (d) in paragraph 4, for "point (d) of Article 16(1) of Directive (EU) 2016/1148" substitute "section 43(2)(c)(iv) of the Civil Contingencies Act 2007";

   (e) in paragraph 5-

      (i)   for "point (e) of Article 16(1) of Directive (EU) 2016/1148 substitute "section 43(2)(c)(v) of the Civil Contingencies Act";

      (ii)   for the words from "Pursuant to" to the end of the paragraph substitute "United Kingdom, European and internationally accepted standards and specifications relevant to the security of network and information systems may also be used.".

(4) In Article 3-

    (a) in paragraph 1, for "point (a) of Article 16(4) of Directive (EU) 2016/1148" substitute "section 43(6)(a) of the Civil Contingencies Act 2007";

    (b) in paragraph 2, for "point (b) of Article 16(4) of Directive (EU) 2016/1148" substitute "section 43 (6)(b) of the Civil Contingencies Act 2007";

    (c) in paragraph 3-

       (i)   for "point (c) of Article 16(4) of Directive (EU) 2016/1148" substitute "section 43(6)(c) of the Civil Contingencies Act 2007";

       (ii)   after "Member States", insert "of the EU or the United Kingdom";

    (d) in paragraph 4, for "point (d) of Article 16(4) of Directive (EU) 2016/1148" substitute "section 43(6)(d) of the Civil Contingencies Act 2007";

    (e) in paragraph 5, for "point (e) of Article 16(4) of Directive (EU) 2016/1148" substitute "section 43(6)(e) of the Civil Contingencies Act 2007".

(5) Delete Article 4.

(6) After Article 5, delete the words from "This Regulation" to "Member States.".

Regulation (EU) 2019/881.

5. Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 is revoked.

Revocation of provision of EEA agreement.

6. In Annex 11 of the EEA Agreement, so far as it forms part of domestic law on and after 1 January 2021 by virtue of section 6 of the European Union (Withdrawal) Act 2019, point 5cp is revoked insofar as it is retained EU law.

Dated: 23rd May 2024.

F R PICARDO,
Chief Minister.

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EXPLANATORY NOTE
(This note is not part of the Regulations)

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

The Regulations amend Part 7 of the Civil Contingencies Act 2007 in the field of cybersecurity. They also amend direct retained EU legislation and revoke the ENISA Regulation because it establishes and confers functions upon the European Union Agency for Network and Information Security which is an EU body, and which was retained by the European Union (Withdrawal) Act 2019 but cannot operate to have any effect in Gibraltar law.