

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

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LEGAL NOTICE NO. 488 OF 2020

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### FINANCIAL SERVICES (ELECTRONIC MONEY) (AMENDMENT) (EU EXIT) REGULATIONS 2020

In exercise of the powers conferred on the Minister by section 11 of the European Union (Withdrawal) Act 2019, the Minister has made these Regulations—

#### **Title.**

1. These Regulations may be cited as the Financial Services (Electronic Money) (Amendment) (EU Exit) Regulations 2020.

#### **Commencement.**

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

#### **Amendment of the Financial Services (Electronic Money) Regulations 2020.**

3.(1) The Financial Services (Electronic Money) Regulations 2020 are amended as follows.

(2) In regulation 2—

- (a) omit the definition of “EEA electronic money institution”;
- (b) for the definition of “electronic money issuer” substitute—

““electronic money issuer” means any of the following persons when they issue electronic money—

- (a) electronic money institutions which are regulated firms;
- (b) small e-money institutions which are exempt persons;
- (c) credit institutions within the meaning of Article 4.1 of the Capital Requirements Regulation, including branches of those institutions which are situated within Gibraltar, regardless of whether the head offices of those branches are located outside Gibraltar;
- (d) the Gibraltar Post Office;

- (e) government departments when acting in their capacity as public authorities; and
  - (f) the Gibraltar Savings Bank.”
  - (c) omit the definition of “host state regulator”; and
  - (d) omit sub-regulation (4).
- (3) In regulation 3(1), omit “, 6”.
- (4) In regulation 5, omit paragraph (d).
- (5) In regulation 6, for sub-regulation (5) substitute–
- “5) For the purposes of the Act, an electronic money institution with Part 7 permission to issue electronic money is, by virtue of section 54 of the Act, an authorised person.”
- (6) In regulation 9–
- (a) in sub-regulation (2)(b), for “the EEA” substitute “Gibraltar”; and
  - (b) in sub-regulation (9), for “outside the EEA” substitute “is outside Gibraltar”.
- (7) In regulation 10–
- (a) in sub-regulation (2)(c) omit “European Union or domestic”; and
  - (b) in sub-regulation (5), for “the EEA” substitute “Gibraltar”.
- (8) Omit regulation 12(3).
- (9) In regulation 13–
- (a) in sub-regulation (2)(b), for “the Money Laundering Directive” substitute “the Proceeds of Crime Act 2015”;
  - (b) omit sub-regulation (10); and
  - (c) omit sub-regulation (11).
- (10) In regulation 31–
- (a) in sub-regulation (7), for the definition of “authorised credit institution” substitute–

““authorised credit institution” means–

- (a) a credit institution with Part 7 permission to carry on the regulated activity of accepting deposits; or
  - (b) an approved foreign credit institution (see sub-regulation (8)), but does not include a person in the same group as the electronic money institution;”;
- (b) in sub-regulation (7), in the definition of “authorised custodian”, omit the words from “or a person” to the end; and
- (c) after sub-regulation (7) insert–

“(8) In sub-regulation (7), “approved foreign credit institution” means –

- (a) the central bank of a state that is a member of the Organisation for Economic Co-operation and Development (an “OECD state”);
- (b) a credit institution that is supervised by the central bank or other banking regulator of an OECD state;
- (c) any credit institution that–
  - (i) is subject to regulation by the banking regulator of a state that is not an OECD state;
  - (ii) is required by the law of the country or territory in which it is established to provide audited accounts;
  - (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time);
  - (iv) has a surplus of revenue over expenditure for the last two financial years; and
  - (v) has an annual report which is not materially qualified.”

(11) In regulation 32(3), in the definition of “authorised insurer”, omit the words “or otherwise authorised in accordance with the Solvency 2 Directive”.

(12) In regulation 41, for sub-regulation (1)(a) substitute “(a) in the case of an electronic money institution, its fulfilment of any of the conditions set out in regulation 9(2) or (4) to (9) or the requirement in regulation 28 to maintain own funds;”.

(13) Omit Part 6.

(14) In regulation 57–

(a) omit sub-regulation (2)(b); and

(b) omit sub-regulation (10).

(15) Omit regulations 61 and 62.

(16) In Schedule 2, in paragraph 11, after the words “Regulation 2015/847/EU of the European Parliament and of the Council of 20 May 2015” add “as it forms part of the law of Gibraltar after IP completion day”.

Dated: 24<sup>th</sup> December 2020.

A J ISOLA,  
Minister with responsibility for financial services.

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### **EXPLANATORY MEMORANDUM**

These regulations are made under the European Union (Withdrawal) Act 2019 and address failures of retained EU law to operate effectively and other deficiencies arising from Gibraltar’s withdrawal from the European Union. The regulations amend the Financial Services (Electronic Money) Regulations 2020, which give effect in Gibraltar to Directive 2009/110/EC.