

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 494 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (MORTGAGE CREDIT) (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 (Mortgage Credit) (Amendment) (EU Exit) Regulations 2020.

Commencement.

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

Amendment of the Financial Services (Mortgage Credit) Regulations 2020.

3.(1) The Financial Services (Mortgage Credit) Regulations 2020 are amended as follows.

(2) In regulation 3(1)—

- (a) omit the definition of “authorised credit institution”;
- (b) omit the definition of “competent authority”;
- (c) in the definition of “foreign currency loan”, for “that of the EEA State or Gibraltar in which the consumer is resident” substitute “sterling”;
- (d) omit the definition of “home State”;
- (e) omit the definition of “host State”;
- (f) omit the definition of “home State regulator”;
- (g) in the definition of “mortgage credit agreement” for “as” substitute “means”;
- (h) in the definition of “mortgage credit intermediary” omit “as”;

- (i) in the definition of “mortgage creditor” omit “as”;
- (j) after the definition of “Part 7 permission” insert–
 - ““recognised credit institution” means–
 - (a) a credit institution with Part 7 permission to carry on the regulated activity of accepting deposits;
 - (b) a central bank of a state that is a member of the Organisation for Economic Co-operation and Development (an “OECD state”);
 - (c) a credit institution that is supervised by the central bank or other banking regulator of an OECD state;
 - (d) any credit institution that–
 - (i) is subject to regulation by the banking regulator of a country or territory 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;”;
- (k) in the definition of “total cost of the credit to the consumer”, for “point (g) of Article 3 of the Consumer Credit Directive” substitute “section 3 of the Financial Services (Consumer Credit) Act 2011”; and
- (l) omit the definition of “the Unfair Commercial Practices Directive”.

(3) Omit regulation 9(6)(c).

(4) In regulation 12(8) omit “and in those EEA States where appointed representatives are permitted to operate”.

(5) In regulation 14–

- (a) in sub-regulation (7)–
 - (i) after paragraph (b) insert “and”; and

- (ii) omit paragraph (c); and
- (b) in sub-regulation (8)–
 - (i) after paragraph (b) insert “and”; and
 - (ii) omit paragraph (c).
- (6) Omit regulation 15(3).
- (7) For regulation 16(6) substitute–

“(6) Where registration is revoked under this regulation, the GFSC must ensure that the mortgage credit intermediary’s or appointed representative’s entry is removed from the Register without delay.”.
- (8) In regulation 20–
 - (a) omit sub-regulation (3); and
 - (b) omit sub-regulation (5).
- (9) In regulation 21(2) for “Unfair Commercial Practices Directive” substitute “Consumer Protection (Unfair Trading) Act 2008”.
- (10) In regulation 22(2)(b) for “the EEA” substitute “Gibraltar”.
- (11) In regulation 24–
 - (a) in sub-regulation (2)(c) for “in an EEA State” substitute “outside Gibraltar”; and
 - (b) in sub-regulation (3) omit “(and in that event the GFSC must comply with Article 13.2 of the Mortgage Credit Directive)”.
- (12) In regulation 25–
 - (a) in sub-regulation (6)–
 - (i) in paragraph (a), for “Article 3.1 of the Distance Marketing Directive” substitute “Schedule 1 to the Financial Services (Distance Marketing) Act 2006”; and
 - (ii) in paragraph (b), for “Article 5.1 of that Directive” substitute “section 8(1) of that Act”; and
 - (b) for sub-regulation (8) substitute–

“(8) In the case of voice telephone communications under section 7(4) of the Financial Services (Distance Marketing) Act 2006, in order to comply with the requirement in paragraph 2 of Schedule 2 to that Act (the provision of a description of the main characteristics of a financial service) the information provided must include at least the items referred to under headings 3 to 6 of the Table in Part 1 of Schedule 2.”.

(13) In regulation 29–

- (a) in sub-regulation (7)(a), for “Data Protection Act 2004” substitute “data protection legislation”; and
- (b) in sub-regulation (8), for “Data Protection Act 2004” substitute “data protection legislation”.

(14) In regulation 31(7) for “Data Protection Act 2004” substitute “data protection legislation”.

(15) In regulation 32–

- (a) in sub-regulation (1) omit “or another EEA State”; and
- (b) in sub-regulation (3), for “Data Protection Act 2004” substitute “data protection legislation”.

(16) In regulation 43–

- (a) in sub-regulation (1), for “authorised credit institution” substitute “recognised credit institution”; and
- (b) in sub-regulation (3), for “authorised credit institution” substitute “recognised credit institution”.

(17) Omit Part 5.

(18) Omit regulation 74.

(19) In Schedule 1, in the paragraph headed “II. Additional assumptions for the calculation of the APRC.”, in paragraph (m)(ii) for “Member State” substitute “country”.

(20) In Schedule 2–

- (a) In Part 1–
 - (i) in the table, in the section headed “3. Main features of the loan”, in each place it occurs, for “[national currency of the borrower]” substitute “sterling”;

- (ii) in the table, in the section headed “6. Amount of each instalment”, in each place it occurs, for “[national currency of the borrower]” substitute “sterling”; and
 - (iii) in the table, in the section headed “12. complaints” omit “(Where applicable) or you can contact FIN-NET for details of the equivalent body in your own country”.
- (b) In Part 2–
- (i) in the paragraph headed “1. Lender.”, in point (3) omit “In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the mortgage creditor must indicate, where applicable, the name and geographical address of its representative in the Member State of residence of the consumer.”;
 - (ii) in the paragraph headed “4. Interest rate and other costs.”, in point (2)–
 - (aa) in the third sub-paragraph for “a competent authority or EBA” substitute “the GFSC”; and
 - (bb) in the fourth sub-paragraph for “Article 17(5)” substitute “regulation 28(5)”;
 - (iii) in the paragraph headed “6. Amount of each instalment.”, in point (4), omit sub-paragraphs (ii) and (iii);
 - (iv) in the paragraph headed “11. Other rights of the borrower.”, in point (2) for “Article 3 of Directive 2002/65/EC” substitute “sections 7 and 8 of the Financial Services (Distance Marketing) Act 2006”;
 - (v) in the paragraph headed “12. Complaints.” omit point (3); and
 - (vi) in the paragraph headed “14. Additional information.” in point (2) for “Article 3.1(3)(g) of Directive 2002/65/EC” substitute “paragraph 3(g) of Schedule 1 to the Financial Services (Distance Marketing) Act 2006”.

(21) In Schedule 4, in Part 2, in Appendix 1, in the Notes on the balance sheet format, in paragraph (3)(i), for “an approved bank” substitute “a recognised credit institution”.

Dated: 24th December 2020.

A J ISOLA,
Minister with responsibility for financial services.

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. These regulations amend the Financial Services (Mortgage Credit) Regulations 2020, which give effect in Gibraltar to Directive 2014/17/EU.