

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 522 OF 2020.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

PROVISION OF SERVICES (AMENDMENT) (EU EXIT) REGULATIONS 2020

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

Title.

1. These Regulations may be cited as the Provision of Services (Amendment)(EU Exit) Regulations 2020.

Commencement.

2. These Regulations come into operation on IP completion day.

Amendment of the Provision of Services Regulations 2010.

3.(1) The Provision of Services Regulations 2010 are amended in accordance with this regulation.

(2) In regulation 2-

(a) in subregulation (1) –

(i) delete the definition of “EEA State”,

(ii) in the definition of “overriding reasons relating to the public interest”, for “the case law of the European Court of Justice” substitute “retained EU case law”, and

(iii) delete the definition of “the Services Directive”; and

(b) delete subregulation (4).

(3) In regulation 3-

(a) delete subregulations (1) and (2);

- (b) in subregulation (3)(b) for “2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions” substitute “2013/36/EU of the European Parliament and of the Council of 26 June 2013 relating to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC”;
- (c) after subregulation (4) insert-
- “(4A) Nothing in these Regulations affects the interpretation, application or operation of any provision made by or under the Immigration, Asylum and Refugee Act.”;
- (d) in subregulation (5)-
- (i) in paragraph (b) for “European Union rules” substitute “retained EU law”;
- (ii) in paragraph (c) delete “, in conformity with European Union law,” and after “State aid rules” insert “in retained EU law”;
- (iii) in paragraph (d) delete “, in conformity with European Union law,”;
- (iv) in paragraph (f) delete “and in conformity with European Union law”;
- (e) in subregulation (7) for paragraphs (a) and (b) substitute-
- “(a) an individual who is a Gibraltarian or a national of the United Kingdom; or
- (b) a business undertaking established in Gibraltar;”;
- (f) in subregulation (8) for paragraphs (a) and (b) substitute –
- “(a) established in Gibraltar; and
- (b) either-
- (i) an individual who is a Gibraltarian or a national of the United Kingdom; or
- (ii) a business undertaking.”;
- (g) after subregulation (8) insert-
- “(9) In subregulations (7)(b) and (8)(b)(ii), “business undertaking” means any entity, whether or not a legal person, that is not an individual and includes a body corporate, a corporation sole and a partnership or other

unincorporated association, engaged in activities for the purposes of trading for profit, incorporated or formed under the law of Gibraltar.”.

(4) In regulation 4-

(a) delete subregulation (1); and

(b) in subregulation (2) for “a European Union measure” substitute “retained EU law”.

(5) In regulation 5(1)(d) for “, the professional title and the EEA State in which the title has been granted” substitute “and the professional title”.

(6) In regulation 6-

(a) in subregulation (1) delete “, including those resident in an EEA State,”; and

(b) delete subregulation (4).

(7) In regulation 8-

(a) delete subregulations (2) and (3); and

(b) in subregulation (4)-

(i) for “Subregulations (1) to (3)” substitute “Subregulation (1)”; and

(ii) for “a European Union instrument” substitute “retained EU law”.

(8) In regulation 9-

(a) in subregulation (1) delete “except as specified in subregulation (2)”; and

(b) delete subregulation (2).

(9) In regulation 10-

(a) delete subregulation (3);

(b) in subregulation (4)-

(i) delete “from a competent authority in an EEA State”; and

(ii) for “specific legislation giving effect to European Union measures” substitute “other retained EU law”.

(10) In regulation 10(6)-

- (a) for “Subregulations (3) to (5)” substitute “Subregulations (4) and (5)”;
 - (b) for paragraph (a) substitute “section 66 of the Qualifications (Right to Practise) Act 2009”;
 - (c) for paragraph (b) substitute “regulations 60(1), 60(4) and (5) and 62 of the Procurement (Public Sector Contracts) Regulations 2016”;
 - (d) delete paragraph (d); and
 - (e) for paragraph (e) substitute “Part XIV, XV and XVI of the Companies Act 2014”;
- (11) In regulation 11(3) delete “(and in other European Union language if appropriate)”.
- (12) In regulation 13-
- (a) in subregulation (1) delete paragraphs (a) and (b); and
 - (b) in subregulation (2) for paragraphs (a) and (b) substitute-
 - “(a) a provision of an enactment other than retained direct EU legislation, which immediately before IP completion day implemented an EU obligation, where the enactment is passed or made before the day on which these Regulations came into operation; or
 - (b) a provision of retained direct EU legislation which, immediately before IP completion day, was contained in an EU instrument that came into force before these Regulations were made.”.
- (13) In regulation 14-
- (a) in subregulation (2) delete paragraphs (a) and (b);
 - (b) in subregulation (3) delete “or in an EEA State”; and
 - (c) delete subregulation (5).
- (14) Delete regulation 15.
- (15) In regulation 16(3) for “European Union law” substitute “retained EU law”.
- (16) In regulation 18-
- (a) in subregulation (1) delete paragraphs (a) to (d) and paragraph (g); and
 - (b) delete subregulation (4).

(17) In regulation 19-

(a) in subregulation (2)(d)-

(i) before “Directive 2005/36/EC” insert “retained EU law which, immediately before IP completion day, implemented an obligation under”;

(ii) for “European Union instruments” substitute “retained EU law”;

(b) in subregulation (3) delete paragraph (a); and

(c) in subregulation (5) delete “(for onward transmission to the Commission)”.

(18) Delete Parts IV and V.

(19) In regulation 27(3) delete “non discriminatory,”.

(20) Delete regulations 28 to 35.

Revocations.

4. Commission Decision 2009/739/EC of 2 October 2009 setting out the practical arrangements for the exchange of information means between Member States under Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market is revoked.

Dated: 24th December 2020.

F R PICARDO,
Chief Minister.

EXPLANATORY MEMORANDUM

These Regulations are made in exercise of the powers conferred by section 11(1) of, and paragraph 1(b) of Schedule 3 to, 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 from the European Union.

These Regulations make amendments to the Provision of Services Regulations 2010 and revoke Commission Decision 2009/739/EC of 2 October 2009.