

Subsidiary Legislation made under s.15.

Independent Monitoring Authority Regulations 2020

LN.2020/507

Commencement

1.1.2021

ARRANGEMENT OF REGULATIONS.

Regulation

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In exercise of the powers conferred on the Minister by section 15 of the European Union (Withdrawal Agreement) Act 2020, the Chief Minister has made these Regulations-

**PART 1
INTRODUCTORY**

Title.

1. These Regulations may be cited as the Independent Monitoring Authority Regulations 2020.

Commencement.

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

Scope.

3. These Regulations prescribe the functions and related powers of the IMA established pursuant to the United Kingdom's European Union (Withdrawal Agreement) Act 2020 in relation to the discharge of its duties in, and concerning, Gibraltar for the purposes of implementing the withdrawal agreement and the EEA EFTA separation agreement.

Interpretation.

- 4.(1) In these Regulations, unless the context otherwise requires-

“EEA EFTA separation agreement” means (as modified from time to time in accordance with any provision of it) the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union;

“Independent Monitoring Authority” and “IMA” means the Independent Monitoring Authority established under the United Kingdom's European Union (Withdrawal Agreement) Act 2020;

“the Minister” means the Chief Minister;

“Part 2” means Part 2 of the withdrawal agreement or (as the case may be) Part 2 of the EEA EFTA separation agreement, so far as the Part in question applies to and in Gibraltar;

“relevant public authority” means the Minister or any other person who exercises functions of a public nature, apart from-

- (a) court or tribunal; or
- (b) the Gibraltar Parliament or a person exercising functions in connection with proceedings in Parliament;

“relevant right” means-

- (a) a right created or arising by or under Part 2; or
- (b) a right which-
 - (i) corresponds to such a right, and
 - (ii) is created or arises by or under a provision of domestic law so far as that provision has effect in connection with Part 2;

“withdrawal agreement” means the agreement between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom’s withdrawal from the EU (as that agreement is modified from time to time in accordance with any provision of it).

(2) In these Regulations, references to a relevant public authority acting include references to the relevant public authority failing to act.

PART 2 FUNCTIONS OF THE IMA ETC.

General duties.

5.(1) The IMA must monitor the implementation and application in Gibraltar of Part 2 of the withdrawal agreement and Part 2 of the EEA EFTA separation agreement.

(2) The duty in subregulation (1) includes keeping under review the adequacy and effectiveness of-

- (a) the legislative framework which implements or otherwise deals with matters arising out of, or related to, Part 2; and
- (b) the exercise by relevant public authorities of functions in relation to Part 2.

Promotion of Part 2.

6.(1) The IMA must promote the adequate and effective implementation and application in Gibraltar of Part 2 of the withdrawal agreement and Part 2 of the EEA EFTA separation agreement.

(2) For related functions see-

- (a) regulation 10; and
- (b) regulation 13.

IMA to address failings.

7. In exercising its functions, the IMA must have regard to the importance of addressing general or systemic failings in the implementation or application of Part 2 in Gibraltar.

Inquiries.

8.(1) Subject to subregulation (3), the IMA may carry out an inquiry-

- (a) in response to a request from the Minister;
- (b) following a complaint by a person under regulation 12; or
- (c) on its own initiative.

(2) The purposes of an inquiry are for the IMA-

- (a) to decide whether-
 - (i) Gibraltar has failed to comply with Part 2, or
 - (ii) a relevant public authority has acted or is proposing to act in a way that prevents a person exercising a relevant right; and
- (b) to identify any recommendations that it considers appropriate to be made to a relevant public authority to promote the adequate and effective implementation or application of Part 2.

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(3) The IMA may not carry out an inquiry under subregulation (1)(b) or (c) unless satisfied that there are reasonable grounds to believe that the inquiry may conclude-

- (a) that Gibraltar has failed to comply with Part 2; or
- (b) that a relevant public authority has acted or is proposing to act in a way that prevents a person exercising a relevant right.

(4) The IMA may decide not to carry out an inquiry even if satisfied as mentioned in subregulation (3).

(5) Among the reasons the IMA may decide not to carry out an inquiry is if it considers that there are no reasonable grounds to believe that the inquiry may identify general or systemic failings in the implementation or application of Part 2.

Conduct of inquiries.

9.(1) Where the IMA intends to carry out an enquiry that is exclusively related to matters arising in Gibraltar, it must publish a notice in the Gibraltar Gazette to that effect.

(2) Where an inquiry is about matters raised in a complaint by a person under regulation 12(1)(a) or (b), the IMA must invite representations from-

- (a) the person;
- (b) any relevant public authority about which the person is complaining; and
- (c) any other person the IMA considers appropriate.

(3) In any other inquiry, the IMA must invite representations from any person it considers appropriate.

(4) The IMA must publish information about how and when a person may submit representations in relation to an inquiry.

(5) The IMA must consider any representations which are submitted accordingly.

Reports following an inquiry.

10.(1) When the IMA has carried out an inquiry under regulation 8, it must-

- (a) prepare a written report of its conclusions; and

- (b) include in the report any recommendations it considers appropriate to be made to a relevant public authority to promote the adequate and effective implementation or application of Part 2.
- (2) The IMA must publish a report as soon as reasonably practicable after preparing it.
- (3) Before publishing a report that contains material relating to border security or terrorism (including material about individual cases), the IMA must give the Minister an opportunity to require the IMA to remove from the report any material which, in the opinion of the Minister, should not be published on the grounds that its publication-
 - (a) is undesirable for reasons of the security of Gibraltar; or
 - (b) might jeopardise an individual's safety.
- (4) In a case where subregulation (3)(a) applies, the Minister must consult the Governor.
- (5) Nothing in these Regulations shall derogate the Governor's powers and responsibilities under the Gibraltar Constitution Order 2006.
- (6) As soon as reasonably practicable after publishing a report, the IMA must send it to-
 - (a) the Minister;
 - (b) any relevant public authority which was invited to make representations in relation to the inquiry;
 - (c) any relevant public authority to which a recommendation is made in the report; and
 - (d) any other relevant public authority the IMA considers appropriate.

Response to report.

- 11.(1) Where a report under regulation 10 includes recommendations to a relevant public authority, the authority must-
- (a) have regard to the recommendations; and
 - (b) publish a response to the recommendations expeditiously and, in any event, within the period of 3 months beginning with the day on which the IMA published its report.
- (2) The authority's response must explain-

- (a) what, if anything, it proposes to do in response to each recommendation; and
- (b) its reasons.

Complaints.

12.(1) A person who claims to have a relevant right may complain to the IMA that-

- (a) Gibraltar has failed to comply with Part 2;
- (b) a relevant public authority has acted or is proposing to act in a way that prevents the person exercising the rights in question.

(2) The IMA must carry out a preliminary review of each complaint in order to decide whether to carry out an inquiry under regulation 8 in relation to it.

(3) In deciding whether to carry out an inquiry in response to a complaint, the IMA must consider whether it would be more appropriate for the person who made the complaint to deal with the subject matter by other means (for example, court proceedings) than for the IMA to carry out an inquiry.

(4) If the IMA decides not to carry out an inquiry, the IMA-

- (a) must inform the person who made the complaint; and
- (b) may advise the person about other ways of dealing with the subject matter of the complaint.

Applying for review or intervening in legal proceedings.

13.(1) The IMA may, if it considers it appropriate to do so in order to promote the adequate and effective implementation or application of Part 2-

- (a) make an application for review; or
- (b) intervene in any legal proceedings (including proceedings on an application for review).

(2) Subregulation (1) does not create a cause of action.

(3) In this regulation, “application for review” means an application for judicial review.

Annual reports for specialised committee etc.

14.(1) The IMA must provide annual reports on the implementation and application, in Gibraltar, of Part 2 of the withdrawal agreement to the specialised committee on citizens' rights established by Article 165(1)(a) of that agreement.

(2) The IMA must provide annual reports on the implementation and application, in Gibraltar, of Part 2 of the EEA EFTA separation agreement to the Joint Committee established by Article 65(1) of that agreement.

(3) The annual reports must contain information on-

- (a) measures taken by relevant public authorities to implement or comply with Part 2;
- (b) the number and nature of complaints made to the IMA under regulation 12(1); and
- (c) the exercise by the IMA of its functions in relation to Part 2 in Gibraltar.

(4) The annual reports may contain any other information which the IMA considers appropriate.

(5) The first annual reports must relate to the period of 12 months beginning on 31 December 2020.

(6) Subsequent annual reports must relate to each successive period of 12 months.

(7) The IMA must provide annual reports to the committees mentioned in subregulations (1) and (2) as soon as reasonably practicable after the end of the period to which they relate.

(8) The IMA must, at the same time as providing an annual report to the committees mentioned in subregulation (1) and (2), provide it to the Minister.

(9) The Minister must, as soon as reasonably practicable after receiving an annual report, lay it before the Parliament.

Guidance.

15.(1) The IMA must publish guidance on how it will exercise its functions under regulations 5 to 13.

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(2) The guidance must explain how the IMA will give effect to the importance of addressing general or systemic failings in the implementation and application of Part 2.

(3) In preparing the guidance, the IMA must have regard to-

- (a) the way in which the European Commission exercises its functions of monitoring and enforcement in relation to citizens' rights under EU law; and
- (b) any guidance or other publications issued by the European Commission about how it exercises such functions.

(4) The IMA must first publish guidance within the period of 3 months beginning with the day on which the membership of the IMA is first constituted in accordance with paragraph 2(1) of Schedule 2 to the United Kingdom's European Union (Withdrawal Agreement) Act 2020.

Supplementary power.

16. The IMA may do anything which it thinks necessary or expedient for the purposes of, or in connection with, the exercise of its functions.

Cooperation by relevant public authorities.

17. A relevant public authority must, so far as reasonably practicable, comply with a request by the IMA to cooperate with it in the exercise of the IMA's functions (including a request to provide information or documents).

PART 3

FURTHER PROVISIONS

Disclosure of tax information.

18.(1) The Commissioner of Income Tax may disclose information for the purpose of-

- (a) facilitating the exercise by the IMA of any of its functions; or
- (b) facilitating the exercise by the Minister or another relevant public authority of functions relating to the IMA.

(2) A person who receives information as a result of subregulation (1) may not-

- (a) use the information for a purpose other than one mentioned in subregulation (1);
or
- (b) further disclose the information,

except with the consent of the Commissioner of Income Tax (which may be general or specific).

(3) If a person discloses information in contravention of subregulation (2), section 3(2) of the Income Tax Act 2010 applies in relation to that disclosure as it applies to an unlawful disclosure.

(4) This regulation does not limit the circumstances in which information may be disclosed under the Income Tax Act 2010 or under any other enactment or rule of law.

Data protection.

19. Nothing in these Regulations authorises the making of a disclosure which contravenes the data protection legislation within the meaning of the Data Protection Act 2004.

Disclosure of information to IMA: national security.

20. A relevant public authority must not disclose information to the IMA if the Chief Minister, after consultation with the Governor, certifies that the disclosure would be undesirable for reasons of national security.

Removal of IMA's functions.

21. The IMA cannot exercise a function in relation to Gibraltar that does not correspond to a function which the IMA has in relation to the United Kingdom by virtue of Schedule 2 to the United Kingdom's European Union (Withdrawal Agreement) Act 2020.