

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4805 GIBRALTAR Friday 1st January 2021

LEGAL NOTICE NO. 40 OF 2021.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (INSURANCE COMPANIES) (AMENDMENT) (EU EXIT) REGULATIONS 2021

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 (Insurance Companies) (Amendment) (EU Exit) Regulations 2021.

Commencement.

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

Amendment of the Financial Services (Insurance Companies) Regulations 2020.

3.(1) The Financial Services (Insurance Companies) Regulations 2020 are amended in accordance with regulations 4 to 18.

Amendment of Part 1.

4.(1) In regulation 3(1)-

(a) for the definition of “authorisation”, substitute-

““authorisation” means Part 7 permission to carry on direct life or non-life insurance or reinsurance business, given by the GFSC under the Act and these Regulations, and “authorised” is to be construed accordingly;”;

(b) omit the following definitions-

(i) “the Brussels I Regulation”;

(ii) “Commission Delegated Regulation (EU) 2015/35”;

(c) in the definition of “control”, for “Article 22 of the Accounting Directive” substitute “section 276 of the Companies Act 2014”;

- (d) after the definition of “control”, insert–
- ““CRA Regulation” means Regulation (EC) No. 1060/2009 of the European Parliament and of the Council, as it forms part of the law of Gibraltar;”;
- (e) omit the following definitions–
- (i) “EEA insurer”;
 - (ii) “EEA reinsurer”;
 - (iii) “EEA State in which the risk is situated”; and
 - (iv) “EEA State of the commitment”;
- (f) in the definition of “external credit assessment institution”, for “Regulation (EC) No. 1060/2009 of the European Parliament and of the Council” substitute “the CRA Regulation”;
- (g) for the definition of “financial undertaking”, substitute–
- “financial undertaking” means any of the following entities–
- (a) a credit institution or financial institution, or an ancillary services undertaking within the meaning of regulation 2(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;
 - (b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of regulation 191;
 - (c) an investment firm or a financial institution; or
 - (d) a mixed financial holding company within the meaning of regulation 191;”;
- (h) in the definition of “Gibraltar insurer”, for “whose home State is” substitute “authorised in”;
- (i) in the definition of “Gibraltar reinsurer”, for “whose home State is” substitute “authorised in”;
- (j) in the definition of “group supervisor”, for “has the meaning given in” substitute “means the GFSC when acting as group supervisor in accordance with”;
- (k) omit the following definitions–
- (i) “home State”;
 - (ii) “home State regulator”;

- (iii) “host State”; and
 - (iv) “host State regulator”;
 - (l) omit the following definitions–
 - (i) “Lawyers Services Directive”;
 - (ii) “the Motor Insurance Directive”;
 - (iii) “national bureau”; and
 - (iv) “national guarantee fund”;
 - (v) “regulated market”; and
 - (vi) “the Rome 1 Regulation”;
 - (m) after the definition of “Solvency Capital Requirement”, insert–

““Solvency 2 Regulation” means Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance, as it forms part of the law of Gibraltar;”;
 - (n) after the definition of “Swiss general insurer”, insert–

““third country” means a country or territory outside Gibraltar;”;
 - (o) in the definition of “third-country insurance undertaking”, for “Article 14 of the Solvency 2 Directive if its head office were situated in the EEA” substitute “these Regulations if its head office were situated in Gibraltar”; and
 - (p) in the definition of “third-country reinsurance undertaking”, for “Article 14 of the Solvency 2 Directive if its head office were situated in the EEA” substitute “these Regulations if its head office were situated in Gibraltar”.
- (2) Omit regulation 4(1).
- (3) In regulation 5–
- (a) in sub-regulation (5), omit “through a branch or the provision of services in accordance with regulations 128 to 133”; and
 - (b) in sub-regulation (8), for “exercise the freedom to provides services or establish branches in other EEA States” substitute “pursue activities outside Gibraltar”.

(4) For regulation 8 substitute–

“Exclusion: breakdown insurance.

8. These Regulations do not apply to breakdown insurance which fulfils all the conditions in paragraph 27 of Schedule 2 to the Act.”.

(5) In regulation 11–

- (a) in sub-regulation (1), for “an EEA State” substitute “Gibraltar or the government of a country or territory outside Gibraltar”; and
- (b) omit sub-regulation (3).

Amendment of Part 2.

5.(1) In regulation 14(8)–

- (a) omit “is valid in all EEA States and”; and
- (b) for “all of those States by means of establishment or the freedom to provide services” substitute “any country or territory where reciprocal arrangements are in place with allow Gibraltar insurers or Gibraltar reinsurers lawfully to do so”.

(2) In regulation 16–

- (a) for sub-regulation (1)(a), substitute–
 - “(a) be–
 - (i) a company (whether limited by shares or by guarantee or unlimited) registered under the Companies Act 2014; or
 - (ii) a friendly society registered under the Friendly Societies Act; and”
- (b) in sub-regulation (3)–
 - (i) in paragraph (b), for “financial sector activities within the meaning of Article 2(8) of the Financial Conglomerates Directive” substitute “a financial sector within the meaning of regulation 2 of the Financial Services (Financial Conglomerates) Regulations 2020”; and
 - (ii) omit paragraph (g) and the “and” which precedes it.

(3) In regulation 18(2)(a), for “of the EEA” substitute “Gibraltar”.

(4) In regulation 21–

- (a) in sub-regulation (3)–
 - (i) in paragraph (a), for “Articles 9 and 10 of the Transparency Directive” substitute “sections 363 and 364 of the Act”; and
 - (ii) in paragraph (b), for “Articles 12.4 and 12.5 of that Directive” substitute “section 366(7) and (9) of the Act”; and
- (b) in sub-regulation (4), for “point (6) of Section A of Annex I to the MiFID 2 Directive” substitute “paragraph 53 of Schedule 2 to the Act”.

(5) Omit regulation 23.

(6) Omit regulation 24.

Amendment of Part 3.

6.(1) In regulation 26(1), for “systems concerned within the EEA” substitute “system”.

(2) In regulation 28–

(a) for sub-regulation (1), substitute–

“(1) The GFSC has sole responsibility for the financial supervision of insurance and reinsurance undertakings.”; and

(b) omit sub-regulations (4) and (5).

(3) In regulation 29–

(a) in sub-regulation (2), omit paragraph (d); and

(b) omit sub-regulation (3).

(4) Omit regulation 31.

(5) In regulation 33–

(a) in sub-regulation (1)(c), for “123(3), 124(2) or 127(8)” substitute “123(3) or 124(2)”; and

(b) in sub-regulation (2)(b), for “123(3), 124(2) or 127(8)” substitute “123(3) or 124(2)”.

(6) In regulation 34–

(a) in sub-regulation (2)–

- (i) in paragraph (b), omit “, 142(3) or 146(2)”;
 - (ii) for paragraph (f), substitute–
 - “(f) the insurer is a third-country insurance undertaking and has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in the country or territory where it has its head office;”; and
 - (iii) for paragraph (j) substitute–
 - “(j) it appears to the GFSC that a Gibraltar insurer has failed to satisfy an obligation under the law of a country or territory outside Gibraltar which applies to the insurance activities of the insurer in that jurisdiction;”; and
- (b) in sub-regulation (5)–
- (i) for paragraph (a) substitute–
 - “(a) an insurer which has its head office in a country or territory outside Gibraltar; or”; and
 - (ii) in the closing words, for “supervisory authority in that EEA State or Switzerland (as the case may be)” substitute “relevant supervisory authority”.
- (7) In regulation 37–
- (a) for sub-regulation (3), substitute–
 - “(3) Without limiting sub-regulation (2), the GFSC may with the consent of the Minister require information to be submitted using a specified template and in a specified format.”; and
 - (b) in sub-regulation (10), for “systems concerned in the EEA” substitute “system”.
- (8) In regulation 38(1), omit “and the Solvency 2 Directive”.
- (9) After regulation 39(6), insert–
- “(7) This regulation and regulation 40 apply subject to any technical standards which further specify–
 - (a) the circumstances under which a capital add-on may be imposed;
 - (b) the methodologies for calculating capital add-ons; or

- (c) the procedures for decisions to set, calculate and remove capital add-ons.”.

Amendment of Part 4.

- 7.(1) In regulation 42, omit “, the Solvency 2 Directive”.
- (2) Omit regulation 44(3).
- (3) In regulation 46(9), for “39, 210 to 212 and 216” substitute “39 and 210 to 212”.
- (4) In regulation 47(2)(a), omit “or the Solvency 2 Directive”.
- (5) In regulation 51–
- (a) re-number sub-regulation (1) as regulation 51; and
 - (b) omit sub-regulations (2) to (6).
- (6) Omit regulation 53.
- (7) In regulation 57–
- (a) in sub-regulation (1), for “Regulation” substitute “Regulations”; and
 - (b) omit sub-regulation (3).
- (8) In regulation 58–
- (a) in sub-regulation (1)–
 - (i) in the opening words, for “EEA State” substitute “country or territory”; and
 - (ii) for paragraph (f), substitute–
 - “(f) authorities responsible for supervising compliance by obliged entities with the Proceeds of Crime Act 2015 or the corresponding law prohibiting money laundering of a country or territory outside Gibraltar.”;
 - (b) in sub-regulation (2)–
 - (i) in paragraph (a), for “the obligation of professional secrecy in Article 64 of the Solvency 2 Directive” substitute “an obligation equivalent to the professional secrecy obligation”; and
 - (b) in paragraph (b)(ii), for “in another EEA State” substitute “from a supervisory authority in another jurisdiction and that authority so requires”;
 - (c) in sub-regulation (4)–

- (i) in paragraph (b), for “the obligation of professional secrecy in Article 64 of the Solvency 2 Directive” substitute “an obligation equivalent to the professional secrecy obligation”; and
 - (b) in paragraph (c), for “in another EEA State” substitute “from a supervisory authority in another jurisdiction and that authority so requires”; and
 - (d) omit sub-regulation (7).
- (9) Omit regulation 59.
- (10) Omit regulation 60.
- (11) Omit regulation 61.

Amendment of Part 6.

- 8.(1) In regulation 66(3)(d), for “72” substitute “71”.
- (2) In regulation 67(8), omit “as reviewed periodically by EIOPA”.
- (3) In regulation 69–
- (a) in sub-regulation (1)(d), for “Commission Delegated Regulation (EU) 2015/35” substitute “the Solvency 2 Regulation”; and
 - (b) in sub-regulation (2)–
 - (i) in paragraph (b), for “EEA States' central governments and central banks” substitute “the government of Gibraltar or the government or central bank of the United Kingdom”; and
 - (ii) in paragraph (c), for “exposures to EEA States' central governments and central banks” substitute “those exposures”.
- (4) For regulation 71, substitute–

“Use of approved technical information.

- 71.(1) An insurance or reinsurance undertaking must use the approved technical information in calculating–
- (a) the best estimate in accordance with regulation 67;
 - (b) the matching adjustment in accordance with regulation 69; and
 - (c) the volatility adjustment in accordance with regulation 70.

(2) The “approved technical information” means any technical information for each relevant currency—

- (a) issued before IP completion day by EIOPA and the European Commission in accordance with Articles 77e.1 and 77e.2 of the Solvency 2 Directive; or
- (b) issued or approved by the GFSC on or after IP completion day, setting out—
 - (i) a relevant risk-free interest rate term structure for calculating the best estimate in regulation 67, without any matching adjustment or volatility adjustment;
 - (ii) for each relevant duration, credit quality and asset class a fundamental spread for calculating the matching adjustment in regulation 69; and
 - (iii) for each relevant national insurance market a volatility adjustment to the relevant risk-free interest rate term structure in regulation 70.

(3) Where, in respect to particular currencies and national markets, the approved technical information does not include a volatility adjustment to the relevant risk-free interest rate term structure, no volatility adjustment is to be applied to the relevant risk free interest rate term structure to calculate the best estimate.

(4) The issue or approval by the GFSC of any technical information under sub-regulation (2)(b) must be published in a manner that the GFSC considers appropriate to bring it to the attention of persons who may be affected by it.”.

(5) Omit regulation 72.

(6) In regulation 87(2), for “Commission Delegated Regulation (EU) 2015/35” substitute “the Solvency 2 Regulation”.

(7) In regulation 94(1), for “point 1 of Annex IV to the Solvency 2 Directive” substitute “paragraph 1 of Schedule 4”.

(8) In regulation 95—

- (a) in sub-regulation (2)(c), for “point 2 of Annex IV to the Solvency 2 Directive” substitute “paragraph 2 of Schedule 4”;
- (b) in sub-regulation (3)(b), for “point 3 of Annex IV to the Solvency 2 Directive” substitute “paragraph 3 of Schedule 4”; and
- (c) in sub-regulation (5)(c), for “point 4 of Annex IV to the Solvency 2 Directive” substitute “paragraph 4 of Schedule 4”.

(9) In regulation 97—

(a) in sub-regulation (1), for the opening words and paragraphs (a) and (b), substitute—

“(1) Where, in circumstances falling within sub-regulation (2), a life insurance undertaking provides retirement benefits—

- (a) which are paid by reference to reaching, or the expectation of reaching, retirement; and
- (b) where the premiums paid for those benefits have a tax deduction which is authorised to policy holders by the law of Gibraltar;”;

(b) in sub-regulation (3), omit “in other EEA States”.

(10) In regulation 118(2), for “UCITS Directive” substitute “Financial Services (UCITS) Regulations 2020”.

(11) For regulation 119, substitute—

“Localisation of assets and prohibition of pledging of assets.

119.(1) The GFSC must not require that the assets held to cover the technical provisions related to insurance risks situated in Gibraltar are localised within Gibraltar.

(2) The GFSC must not—

- (a) require the localisation within Gibraltar of the assets representing the recoverables from reinsurance contracts; or
- (b) retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions,

where the reinsurer is a third-country insurance or reinsurance undertaking, situated in a country or territory whose solvency regime is regarded as equivalent to that laid down in the law of Gibraltar.

Saving for Covered Agreement.

119A.(1) Nothing in these Regulations permits or requires the GFSC to apply any provision or exercise any function in a manner which is inconsistent with any condition or obligation of the Covered Agreement.

(2) Where the GFSC is the supervisory authority of an insurer or reinsurer which carries on activities to which the Covered Agreement applies, the GFSC must use all reasonable endeavours to enter into an arrangement with the supervisory authority of the relevant US State for co-operation in the exchange of information in respect of that insurer or reinsurer, substantially in the form of the Memorandum of Understanding set out in the Annex to the Covered Agreement.

(3) The “Covered Agreement” means the Agreement between the United Kingdom and the United States of America on prudential measures regarding insurance and reinsurance (which, by virtue of Article 2(r) of the Agreement, extends to Gibraltar).”.

Amendment of Part 7.

9.(1) In regulation 121(1), omit “after having communicated its intentions to the host States’ supervisory authorities”.

(2) In regulation 122–

(a) in sub-regulation (5), omit “as declared by EIOPA and, where appropriate, after consulting the ESRB,”;

(b) in sub-regulation (6), for “request that EIOPA” substitute “, with the consent of the Minister,”;

(c) for sub-regulation (8), substitute–

“(8) The GFSC must–

(a) assess on a regular basis whether the conditions in sub-regulation (7) still apply; and

(b) declare when an exceptional adverse situation has ceased to exist.”; and

(d) for sub-regulation (11), substitute–

“(11) In exceptional circumstances, where the GFSC is of the opinion that the financial situation of the undertaking concerned will deteriorate further, the GFSC–

(a) may exercise any relevant powers under the Act or these Regulations to restrict or prohibit the free disposal of the undertaking’s assets; and

(b) where it does so, must designate the assets covered by those measures.”.

(3) In regulation 123–

(a) for sub-regulation (3), substitute–

“(3) The GFSC–

(a) may also exercise any relevant powers under the Act or these Regulations to restrict or prohibit the free disposal of the undertaking’s assets; and

(b) where it does so, must designate the assets covered by those measures.”; and

(b) omit sub-regulation (5).

(4) For regulation 124(1), substitute–

“(1) The GFSC may exercise any relevant powers under the Act or these Regulations to prohibit the free disposal of assets located in Gibraltar, in order to assist the supervisory authority of a country or territory outside Gibraltar with which it has reciprocal arrangements for the designation of the assets of insurers or reinsurers.”.

(5) In regulation 127, omit sub-regulations (6) to (8).

Amendment of Part 8.

10. Omit Part 8.

Amendment of Part 9.

11.(1) In regulation 151–

(a) in sub-regulation (1)(a), for “of the EEA” substitute “Gibraltar”; and

(b) in sub-regulation (2)–

(i) in paragraph (a), for “state” substitute “country or territory”; and

(ii) omit paragraph (g).

(2) Omit regulation 153.

(3) In regulation 155(6), omit “and the excess must be kept in one or more EEA States”.

(4) Omit regulation 156.

(5) In regulation 157–

(a) re-number sub-regulation (1) as regulation 157; and

(b) omit sub-regulation (2).

(6) Omit regulation 158(4).

(7) Omit regulation 159.

(8) For regulation 160, substitute–

“Equivalence in relation to reinsurance undertakings.

160. A reinsurance contract concluded with an undertaking which has its head office in a third country must be treated in the same manner as a reinsurance contract concluded with an undertaking authorised in accordance with these Regulations where, in accordance with regulation 238, it is determined that the solvency regime of the third country is equivalent to that required under the law of Gibraltar.”.

(9) In regulation 161(1)(a), for “the Solvency 2 Directive, as set out in regulation 156” substitute “these Regulations”.

(10) Omit regulation 162.

Amendment of Part 10.

12.(1) In regulation 163–

(a) omit sub-regulation (4); and

(b) in sub-regulation (5), for “ so requires, the particulars referred to in sub-regulation (4)(b) must include a declaration by the insurance undertaking” substitute “requires proof that the obligation to take out insurance has been complied with, the insurance undertaking must issue a certificate to an insured person which includes a declaration”.

(2) In regulation 164, omit “, whether as the EEA State in which the risk is situated or as the EEA State of the commitment”.

(3) Omit regulation 168.

(4) In regulation 169–

(a) omit sub-regulation (1)(b); and

(b) in sub-regulation (7), for “Where Gibraltar is the EEA State of the commitment, the” substitute “The”.

(5) Omit regulation 172.

(6) Omit regulations 173 to 178.

(7) In regulation 179–

(a) in sub-regulation (2)(c), for “EEA State” substitute “country or territory (including Gibraltar)”; and

(b) in sub-regulation (4), for “activities under one of the denominations in the Lawyers Services Directive” substitute “legal activities”.

(8) Omit regulation 186.

(9) In regulation 190(2), for “is subject to these Regulations and the Solvency 2 Directive and requires prior approval by the GFSC” substitute “requires prior approval by the GFSC and is subject to these Regulations, the Solvency 2 Regulation and Commission Implementing Regulation (EU) 2015/462 as it forms part of the law of Gibraltar”.

Amendment of Part 11.

13.(1) In regulation 191(1)–

(a) in the definition of “college of supervisors”, omit “established in accordance with Article 212.1(e) of the Solvency 2 Directive”;

(b) after the definition of “college of supervisors”, insert–

““common management relationship” means a relationship between two or more undertakings which satisfies the following conditions–

(a) the undertakings are not connected in the manner described in section 276 of, and Schedule 20 to, the Companies Act 2014; and

(b) either–

(i) the undertakings are managed on a unified basis under a contract with one of them, or provisions in the undertakings’ respective memoranda or articles of association; or

(ii) the administrative, management or supervisory bodies of those undertakings consist, for the major part, of the same persons in office during the financial year in respect of which it is being decided whether such a relationship exists;

“Financial Conglomerates Regulations” means the Financial Services (Financial Conglomerates) Regulations 2020;”;

(c) in the definition of “group”–

(i) in paragraph (a), for “relationship as set out in Article 22.7 of the Accounting Directive” substitute “common management relationship”; and

(ii) in paragraph (b)(ii), for “group supervisor” substitute “GFSC”;

(d) in the definition of “mixed financial holding company”, for “as defined in Article 2.15 of the Financial Conglomerates Directive” substitute “within the meaning of the Financial Conglomerates Regulations”;

(e) in the definition of “participating undertaking”, for “relationship as set out in Article 22.7 of the Accounting Directive” substitute “common management relationship”;

(f) in the definition of “related undertaking”, for “relationship as set out in Article 22.7 of the Accounting Directive” substitute “common management relationship”; and

(g) for the definition of “subsidiary”, substitute–

““subsidiary undertaking” includes any undertaking over which in the opinion of the GFSC a parent undertaking effectively exercises a dominant influence.”.

(2) In regulation 192–

(a) in sub-regulation (3)–

- (i) in paragraph (a), omit “, in accordance with regulations 197 to 236”;
- (ii) in paragraph (b), for “the EEA, in accordance with regulations 197 to 236” substitute “Gibraltar”;
- (iii) in paragraph (c), omit “, in accordance with regulations 237 to 240”; and
- (iv) in paragraph (d), omit “, in accordance with regulation 241”; and

(b) for sub-regulations (4) to (7), substitute–

“(4) Where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company referred to in sub-regulation (3)(a) and (b) is a subsidiary undertaking of–

- (a) another insurance or reinsurance undertaking;
- (b) another insurance holding company; or
- (c) another mixed financial holding company,

which has its head office in Gibraltar, this Part only applies at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in Gibraltar.

(5) Where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company referred to in sub-regulation (3)(a) and (b) is a related undertaking of a regulated entity or a mixed financial holding company that has its head office in Gibraltar, and which is subject to supplementary supervision in accordance with regulation 5 of the Financial Conglomerates Regulations, the GFSC may decide not to carry out either or both of–

- (a) the supervision of risk concentration referred to in regulation 221; and
- (b) the supervision of intra-group transactions referred to in regulation 222.

(6) Where a mixed financial holding company is subject to equivalent provisions under–

- (a) these Regulations and the Financial Conglomerates Regulations, in particular in terms of risk-based supervision, the GFSC may apply only the relevant provisions of the Financial Conglomerates Regulations to that mixed financial holding company; and
 - (b) these Regulations and the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020, in particular in terms of risk based supervision, the GFSC may, apply only the provisions of whichever set of those Regulations relates to the most significant sector, determined in accordance with regulation 3(2) of the Financial Conglomerates Regulations.”.
- (3) In regulation 193–
 - (a) in sub-regulation (2), omit “(when acting as group supervisor)”;
 - (b) omit sub-regulation (3); and
 - (c) in sub-regulation (4), omit “(when acting as group supervisor)”.
- (4) Omit regulations 194 to 196.
- (5) In regulation 197–
 - (a) in sub-regulation (4), omit “(as group supervisor)”;
 - (b) omit sub-regulation (5).
- (6) In regulation 198–
 - (a) in sub-regulation (1), omit “(as group supervisor)”;
 - (b) in sub-regulation (2)–
 - (i) in the first place it occurs, omit “(as group supervisor)”;
 - (ii) for “(as group supervisor) after consulting the other supervisory authorities concerned and the group itself” substitute “after consulting the group concerned”;
 - (c) in sub-regulation (4), omit “(as group supervisor)”;
 - (d) in sub-regulation (5), omit “(as group supervisor)”.
- (7) In regulation 199(3), for “any other supervisory authority concerned and the group itself” substitute “the group concerned”.
- (8) In regulation 200–
 - (a) in sub-regulation (4), omit “(as group supervisor) and any other supervisory authority concerned”;

- (b) in sub-regulation (5)–
 - (i) in the opening words, for “(as group supervisor) must determine, after consulting any other supervisory authority concerned and the group itself” substitute “after consulting the group concerned”; and
 - (ii) for paragraphs (a) to (c), substitute–
 - “(a) where there are no capital ties between some of the undertakings in a group; or
 - (b) where the GFSC has determined that–
 - (i) the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in the GFSC’s opinion, a significant influence is effectively exercised over that undertaking; or
 - (ii) an undertaking is a parent undertaking of another because, in the GFSC’s opinion, it effectively exercises a dominant influence over that other undertaking.”.
- (9) In regulation 201–
 - (a) in sub-regulation (5), omit “or any other supervisory authority”; and
 - (b) in sub-regulation (7)–
 - (i) for “supervisory authority of that related undertaking” substitute “GFSC”; and
 - (ii) for “authorised by that supervisory authority” substitute “so authorised”.
- (10) In regulation 204–
 - (a) re-number sub-regulation (1) as regulation 204; and
 - (b) omit sub-regulation (2).
- (11) In regulation 205(4), omit “(as group supervisor)”.
- (12) In regulation 206–
 - (a) in sub-regulation (2)–
 - (i) in paragraph (b), for “at least” substitute “which, in accordance with regulation 238, is determined to be”; and
 - (ii) in the closing words, omit “(as group supervisor)”;

- (b) omit sub-regulation (3).
- (13) In regulation 207–
- (a) in sub-regulation (1), for “Annex I to the Financial Conglomerates Directive” substitute “Schedule 1 to the Financial Conglomerates Regulations”;
 - (b) in sub-regulation (2)–
 - (i) for “Annex” substitute “Schedule”; and
 - (ii) omit “(as group supervisor)”; and
 - (c) in sub-regulation (4), omit “(as group supervisor)”.
- (14) In regulation 208, for “in an EEA State or a third country” substitute “outside Gibraltar”.
- (15) In regulation 210–
- (a) in sub-regulation (1), for “group supervisor” substitute “GFSC”;
 - (b) for sub-regulation (2) substitute–

“(2) The GFSC must–

 - (a) decide whether to grant that permission and determine the terms and conditions, if any, to which it is subject; and
 - (b) provide the applicant with a document setting out its fully reasoned decision.”;
 - (c) omit sub-regulation (3) to (6);
 - (d) in sub-regulation (7)–
 - (i) in the opening words, omit “(as a member of the college of supervisors)”; and
 - (ii) in paragraph (c), for “both the insurance or reinsurance undertaking and the other members of the college of supervisors” substitute “the insurance or reinsurance undertaking”.
- (16) In regulation 211–
- (a) in sub-regulation (1)–
 - (i) in the opening words, omit “(as group supervisor)”; and

- (ii) in paragraph (b), omit “by supervisory authorities”; and
 - (b) in sub-regulation (2), omit “(together with implementing measures taken in accordance with Article 37.6 to 37.8 of the Solvency 2 Directive)”.
- (17) In regulation 212(7)–
 - (a) omit “(as group supervisor)”;
 - (b) omit “(together with implementing measures taken in accordance with Article 37.6 to 37.8 of the Solvency 2 Directive)”.
- (18) In regulation 213(1), omit “(as group supervisor)”.
- (19) Omit regulations 214 to 220.
- (20) In regulation 221–
 - (a) in sub-regulation (1)–
 - (i) after “group level”, insert “of a group of the kind in regulation 192(3)(a) or (b)”;
 - (ii) for “236” substitute “225, 235 and 236”;
 - (b) in sub-regulation (2)–
 - (i) for “group supervisor” substitute “GFSC”;
 - (ii) omit “, unless regulation 194(2) applies”;
 - (c) in sub-regulation (3)–
 - (i) in the opening words, for “group supervisor” substitute “GFSC”;
 - (ii) in paragraph (b), for “group supervisor after consulting the group and the other supervisory authorities concerned” substitute “GFSC after consulting the group”;
 - (d) in sub-regulation (5), omit “and the other supervisory authorities concerned”; and
 - (e) for sub-regulation (6), substitute–

“(6) The GFSC must take account of the specific group and its risk-management structure when defining the type of risks that must be reported.”.
- (21) In regulation 222–

- (a) in sub-regulation (1), for “236” substitute “225, 235 and 236”;
- (b) in sub-regulation (2)–
 - (i) for “group supervisor” substitute “GFSC”; and
 - (ii) omit “, unless regulation 194(2) applies”;
- (c) in sub-regulation (4)–
 - (i) in the opening words, for “group supervisor” substitute “GFSC”; and
 - (ii) in paragraph (b), for “group supervisor after consulting the group and the other supervisory authorities concerned” substitute “GFSC after consulting the group”;
- (d) in sub-regulation (6), omit “and the other supervisory authorities concerned”; and
- (e) for sub-regulation (7), substitute–

“(7) The GFSC must take account of the specific group and its risk-management structure when defining the type of risks that must be reported.”.

(22) In regulation 223–

- (a) in sub-regulation (1), after “group”, insert “of the kind in regulation 192(3)(a) or (b)”;
- (b) in sub-regulation (5), for “group supervisor” substitute “GFSC”;
- (c) in sub-regulation (6)(a), for “to 236” substitute “225, 235 and 236”;
- (d) omit sub-regulation (7); and
- (e) for sub-regulation (8), substitute–

“(8) Where a group exercises the option provided in sub-regulation (6)(c), it does not exempt the subsidiaries concerned from the obligation to ensure that the requirements of regulation 46 are met.”.

(23) For regulations 224 and 225, substitute–

“Group supervisor.

224. Where an insurance undertaking or reinsurance undertaking that is authorised by the GFSC under Part 7 of the Act is part of a group, the GFSC is the group supervisor and must supervise that group.

Functions of group supervisor and other supervisors.

225.(1) Sub-regulation (2) applies where the GFSC is the group supervisor of a group of the type in regulation 192(3)(a) or (b).

(2) The GFSC must—

- (a) conduct supervisory reviews and assessments of the financial situation of the group;
- (b) assess the group's compliance with the rules on solvency, risk concentration and intra-group transactions;
- (c) assess the group's system of governance in accordance with regulation 223;
- (d) assess whether the members of the administrative, management or supervisory body of the participating undertakings in the group are fit and proper to carry out their functions;
- (e) determine applications for an internal model at group level as set out in regulations 210 and 212; and
- (f) carry out the other tasks, measures and decisions assigned to the group supervisor by these Regulations.”.

(24) Omit regulations 226 to 232.

(25) Omit regulation 233(4).

(26) In regulation 236—

- (a) in sub-regulation (1), for “Sub-regulations (2) to (4) apply” substitute “Sub-regulation (2) applies”;
- (b) in sub-regulation (2), after “mixed financial holding company” insert “the head office of which is in Gibraltar,”; and
- (c) omit sub-regulations (3) and (4).

(27) For regulations 237 to 240, substitute—

“Parent undertakings outside Gibraltar: equivalence.

237.(1) The GFSC must rely on the equivalent group supervision exercised by third country supervisory authorities where–

- (a) the condition in sub-regulation (2) is met; or
- (b) the alternative condition in sub-regulation (3) is met.

(2) The condition is that–

- (a) either of the following determinations have been made–
 - (i) the Minister has made regulations under regulation 238(1) or the European Commission has adopted a delegated act under Article 260.3 of the Solvency 2 Directive prior to IP completion day, determining that the prudential regime of the third country is equivalent; or
 - (ii) the Minister has made regulations under regulation 238(3) or the European Commission has adopted a delegated act under Article 260.5 of the Solvency 2 Directive prior to IP completion day, determining that the prudential regime of the third country is temporarily equivalent;
- (b) that determination still applies;
- (c) there is no insurance undertaking or reinsurance undertaking situated in Gibraltar with a balance sheet total that exceeds the balance sheet total of the parent undertaking situated in the third country; and
- (d) the GFSC has verified that the group is subject to supervision by a third-country supervisory authority in accordance with that equivalent or temporarily equivalent regime.

(3) The alternative condition is that the GFSC has verified that the group is subject to supervision by a third country supervisory authority which is equivalent in accordance with sub-regulation (4).

(4) Where the conditions in sub-regulation (2) do not apply, the GFSC acting in accordance with sub-regulation (5)–

- (a) must take a decision on equivalence at the request of the parent undertaking or the insurance undertaking or reinsurance undertaking; and
- (b) may take a decision on equivalence on its own initiative.

(5) Where the GFSC takes a decision on equivalence, the GFSC must–

- (a) verify equivalence at the level of the ultimate third-country parent undertaking;
- (b) ensure that its decision on equivalence does not contradict any previous decision taken in relation to the third country, except where it is necessary to do so in order to take account of significant changes to the supervisory regime in Gibraltar or the third country; and

- (c) take its decision in accordance with the criteria in Article 380 of the Solvency 2 Regulation (as modified by regulation 238(6)).

Determination of equivalence and temporary equivalence.

238.(1) Where the criteria in Article 380 of the Solvency 2 Regulation have been fulfilled by a third country, the Minister may by regulations determine that the prudential regime of that third country is equivalent to that laid down in these Regulations.

(2) Regulations under sub-regulation (1) must be regularly reviewed by the Minister, in order to take account of–

- (a) any changes to the prudential regime for the supervision of groups in Gibraltar or the third country; or
- (b) any other change that may affect the decision on equivalence.

(3) Despite sub-regulation (1), the Minister may by regulations determine that the prudential regime of a third country that applies to undertakings the parent undertaking of which has its head office outside Gibraltar is, during the relevant period, temporarily equivalent to that laid down in these Regulations, if that third country–

- (a) has given a commitment to the Minister–
 - (i) to adopt and apply a prudential regime that is capable of being assessed equivalent in accordance with Article 380 of the Solvency 2 Regulation before the end of the relevant period; and
 - (ii) to engage in the equivalence assessment process;
- (b) has established a work programme and allocated sufficient resources to fulfil that commitment;
- (c) has a prudential regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency and to the supervision of groups;
- (d) has entered into written arrangements to cooperate and exchange confidential supervisory information with the GFSC;
- (e) has an independent system of supervision; and
- (f) has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities, in particular on the exchange of information with the GFSC.

(4) The “relevant period” in sub-regulation (3) is the period ending on the earlier of 31st December 2022 or the date on which the prudential regime of the third country is determined to be equivalent under sub-regulation (1).

(5) The GFSC must publish on its website a list of all third countries in respect of which the Minister has made regulations under sub-regulations (1) and (3).

(6) For purposes of this regulation, Article 380 of the Solvency 2 Regulation is to apply with the following modifications—

- (a) in the opening words for “Title III of Directive 2009/138/EC” substitute “the Financial Services (Insurance Companies) Regulations 2020”; and
- (b) in point (r), for “one of the calculation methods set out in Articles 230 and 233 of Directive 2009/138/EC”, substitute “Method 1 or Method 2, as set out in regulations 209 and 212 respectively of the Financial Services (Insurance Companies) Regulations 2020”.

Parent undertakings outside Gibraltar: absence of equivalence.

239.(1) This regulation applies where—

- (a) a parent undertaking of an insurance undertaking or reinsurance undertaking established in Gibraltar has its head office in a third country;
- (b) one of the conditions in sub-regulation (2) is satisfied, and
- (c) one of the conditions in sub-regulation (3) is satisfied.

(2) The conditions are that the prudential group supervision regime of the third country—

- (a) has not been determined to be equivalent; or
- (b) has been determined to be equivalent, but the GFSC has not verified that the group is subject to supervision by a third-country supervisory authority in accordance with that equivalent regime.

(3) The conditions are that the prudential group supervision regime of the third country—

- (a) has not been determined to be temporarily equivalent; or
- (b) has been determined to be temporarily equivalent, but the group—
 - (i) is not subject to that regime; or
 - (ii) contains an insurance undertaking or reinsurance undertaking in Gibraltar with a balance sheet total that exceeds the balance sheet total of the parent undertaking situated in the third country.

(4) The GFSC must, at the level of the ultimate third-country parent undertaking—

- (a) ensure appropriate supervision of the insurance undertakings and reinsurance undertakings that are authorised by the GFSC in the group; and
- (b) ensure the objectives of group supervision are achieved.

(5) The GFSC may, in particular, require the group to establish an insurance holding company or mixed financial holding company with its head office in Gibraltar.

Parent undertakings outside Gibraltar: levels

240.(1) Where the parent undertaking of an insurance undertaking or reinsurance undertaking with its head office outside Gibraltar is itself a subsidiary of–

- (a) an insurance holding company or a mixed financial holding company which has its head office in a third country; or
- (b) a third-country insurance or reinsurance undertaking,

regulation 237 only applies at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(2) The GFSC may, in the absence of equivalent supervision referred to in regulation 237, carry out a new verification of equivalence at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether at the level of a third-country insurance holding company, a third country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(3) Where sub-regulation (2) applies, the GFSC must explain its decision to the group to which the insurance undertaking or reinsurance undertaking belongs.”.

(28) In regulation 241–

- (a) in sub-regulation (1), omit “(along with the other supervisory authorities concerned)”; and
- (b) in sub-regulation (2), for “236” substitute “225, 235 and 236”.

Amendment of Part 12.

14.(1) For regulation 242, substitute–

“Scope of Part.

242. This Part applies to reorganisation measures and winding-up proceedings concerning insurance undertakings.”.

(2) In regulation 243–

- (a) re-number sub-regulation (1) as regulation 243;

- (b) for the definition of “liquidator” substitute—
““liquidator” means the liquidator of an insurance undertaking appointed under the Insolvency Act 2011;”;
 - (c) omit the definition of “branch”;
 - (d) omit the definition of “competent authority”;
 - (e) for the definition of “administrator” substitute—
““administrator” means an administrator of an insurance undertaking appointed under the Insolvency Act 2011;”;
 - (f) in the definition of “reorganisation measures”, for “competent authority” substitute “Supreme Court”;
 - (g) in the definition of “winding-up proceedings”, for “competent authority” substitute “Supreme Court”; and
 - (h) omit sub-regulation (2).
- (3) In regulation 244—
- (a) for sub-regulation (1), substitute—
“(1) Only the Supreme Court is entitled to decide on reorganisation measures in respect of a Gibraltar insurer.”;
 - (b) in sub-regulation (2), omit “, including its branches in other EEA States,”;
 - (c) in sub-regulation (3)—
 - (i) omit “, including its branches in other EEA States,”; and
 - (ii) for “regulations 260 to 267” substitute “regulations 263 and 264”; and
 - (d) omit sub-regulations (4) and (5).
- (4) In regulation 245—
- (a) re-number sub-regulation (1) as regulation 245; and
 - (b) omit sub-regulation (2).
- (5) In regulation 246—

(a) for sub-regulation (1), substitute–

“(1) Subject to sub-regulation (5), where a reorganisation measure in Gibraltar is subject to a right of appeal, the Supreme Court or administrator must publish the decision on the reorganisation measure in the Gazette.”;

(b) omit sub-regulations (2);

(c) for sub-regulation (3), substitute–

“(3) Any publication under sub-regulation (1) must include the name and address of the administrator.”; and

(d) in sub-regulation (5), for “(1) to (4)” substitute “(1), (3) and (4)”.

(6) Omit regulation 247.

(7) In regulation 248–

(a) for sub-regulation (1), substitute–

“(1) Only the Supreme Court is entitled to decide on winding-up proceedings in respect of a Gibraltar insurer.”;

(b) in sub-regulation (2), omit “, including its branches in other EEA States,”;

(c) in sub-regulation (3)–

(i) omit “, including its branches in other EEA States,”; and

(ii) for “regulations 260 to 267” substitute “regulations 263 and 264”;

(d) omit sub-regulations (4) and (5); and

(e) omit sub-regulation (7).

(8) Omit regulation 249.

(9) In regulation 251(6), omit “261, 262 or”.

(10) For regulation 255, substitute–

“Publication of decisions on winding-up proceedings.

255.(1) The Supreme Court, the liquidator or a person appointed for that purpose by the Supreme Court must publish in the Gazette the decision to commence winding-up proceedings.

(2) Any publication under sub-regulation (1) must include the name and address of the liquidator.”.

(11) In regulation 256(1), omit “whose habitual residence, domicile or head office is in an EEA State other than Gibraltar”.

(12) In regulation 257–

(a) in sub-regulation (1), omit “whose habitual residence, domicile or head office is in an EEA State other than Gibraltar, including a public authority of an EEA State,”; and

(b) omit sub-regulation (2).

(13) Omit regulation 258.

(14) In regulation 259–

(a) re-number sub-regulation (1) as regulation 259; and

(b) omit sub-regulation (2).

(15) Omit regulations 260 to 262.

(16) For regulation 263(2), substitute–

“(2) Sub-regulation (1) does not preclude actions for the nullity, voidability, or unenforceability of legal acts detrimental to creditors.”.

(17) In regulation 264–

(a) in sub-regulation (1), for “Without limiting regulation 261 the” substitute “The”; and

(b) for sub-regulation (2), substitute–

“(2) Sub-regulation (1) does not preclude actions for the nullity, voidability, or unenforceability of legal acts detrimental to creditors which may be taken to set aside payments or transactions under the law applicable to that market.”.

(18) Omit regulations 265 to 267.

(19) In regulation 268–

(a) re-number sub-regulation (1) as regulation 268; and

(b) omit sub-regulations (2) to (4).

(20) Omit regulations 269 to 271.

(21) In regulation 272, for “245, 248 or 273” substitute “245 or 248”.

(22) Omit regulation 273.

Amendment of Part 13.

15.(1) In regulation 274(2), for paragraphs (b) to (d), substitute—

“(b) insurance and reinsurance undertakings which are regulated as small undertakings in accordance with regulation 5(7); and

(c) third-country insurance and reinsurance undertakings with a branch in Gibraltar.”.

(2) Omit regulation 279.

(3) In regulation 281, for “have effect” substitute “continue to have effect after IP completion day, but that Schedule is to be applied with any modifications necessary to take account of Gibraltar’s withdrawal from the European Union and, in particular, any reference in that Schedule to an EU Directive is to read as a reference to that Directive as it applied immediately before IP completion day”.

Amendment of Schedule 2.

16. In Schedule 2, for paragraph 2(3)(c), substitute—

“(c) in the case of a Gibraltar insurer, that the company has failed to satisfy an obligation under the law of a country or territory outside Gibraltar which applies to the insurance or reinsurance activities of the insurer in that jurisdiction.”.

Amendment of Schedule 3.

17. In Schedule 3—

(a) in paragraph 1, for “EU-Swiss Direct Insurance Agreement” substitute “UK-Swiss Agreement”;

(b) in paragraph 2—

(i) omit the definition of “the EU-Swiss Direct Insurance Agreement”; and

(ii) after the definition of “Swiss general insurer”, insert—

““UK-Swiss Agreement” means the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Direct Insurance other than Life Insurance (CP 26), as amended from time to time (which, by virtue of Article 43 of the Agreement, extends to Gibraltar)”.

New Schedule 4.

18. After Schedule 3, insert–

**“SCHEDULE 4
SOLVENCY CAPITAL REQUIREMENT (SCR) STANDARD FORMULA**

Regulations 94 and 95

Calculation of the Basic Solvency Capital Requirement.

1.(1) The Basic Solvency Capital Requirement must be equal to the following–

$$\text{Basic SCR} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times \text{SCR}_i \times \text{SCR}_j}$$

where–

SCR_i denotes the risk module i;

SCR_j denotes the risk module j; and

‘i,j’ means that the sum of the different terms should cover all possible combinations of i and j.

(2) In the calculation, SCR_i and SCR_j are replaced by the following–

SCR_{non-life} denotes the non-life underwriting risk module;

SCR_{life} denotes the life underwriting risk module;

SCR_{health} denotes the health underwriting risk module;

SCR_{market} denotes the market risk module; and

SCR_{default} denotes the counterparty default risk module.

(3) The factor Corr_{i,j} denotes the item set out in row i and column j of the following correlation matrix–

i \ j	Market	Default	Life	Health	Non-life
Market	1	0.25	0.25	0.25	0.25
Default	0.25	1	0.25	0.25	0.5
Life	0.25	0.25	1	0.25	0
Health	0.25	0.25	0.25	1	0
Non-life	0.25	0.5	0	0	1

Calculation of the non-life underwriting risk module.

2.(1) The non-life underwriting risk module set out in regulation 95(2) must be equal to the following—

$$SCR_{\text{non-life}} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times SCR_i \times SCR_j}$$

where—

SCR_i denotes the sub-module i ;

SCR_j denotes the sub-module j ; and

i,j means that the sum of the different terms should cover all possible combinations of i and j .

(2) In the calculation, SCR_i and SCR_j are replaced by the following—

$SCR_{\text{nl premium and reserve}}$ denotes the non-life premium and reserve risk sub-module, and

$SCR_{\text{nl catastrophe}}$ denotes the non-life catastrophe risk sub-module.

Calculation of the life underwriting risk module.

3.(1) The life underwriting risk module set out in regulation 95(3) must be equal to the following—

$$SCR_{\text{life}} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times SCR_i \times SCR_j}$$

where—

SCR_i denotes the sub-module i ;

SCR_j denotes the sub-module j ; and

‘ i,j ’ means that the sum of the different terms should cover all possible combinations of i and j .

(2) In the calculation, SCR_i and SCR_j are replaced by the following—

$SCR_{\text{mortality}}$ denotes the mortality risk sub-module;

$SCR_{\text{longevity}}$ denotes the longevity risk sub-module;

SCR_{disability} denotes the disability – morbidity risk sub-module;

SCR_{life expense} denotes the life expense risk sub-module;

SCR_{revision} denotes the revision risk sub-module;

SCR_{lapse} denotes the lapse risk sub-module; and

SCR_{life catastrophe} denotes the life catastrophe risk sub-module.

Calculation of the market risk module.

Structure of the market risk module

4.(1) The market risk module, set out in regulation 95(5) must be equal to the following:

$$\text{SCR}_{\text{market}} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times \text{SCR}_i \times \text{SCR}_j}$$

where—

SCR_i denotes the sub-module i;

SCR_j denotes the sub-module j; and

‘i,j’ means that the sum of the different terms should cover all possible combinations of i and j.

(2) In the calculation, SCR_i and SCR_j are replaced by the following—

SCR_{interest rate} denotes the interest rate risk sub-module;

SCR_{equity} denotes the equity risk sub-module;

SCR_{property} denotes the property risk sub-module;

SCR_{spread} denotes the spread risk sub-module;

SCR_{concentration} denotes the market risk concentrations sub-module; and

SCR_{currency} denotes the currency risk sub-module.”.

Dated

A J ISOLA
Minister with responsibility for financial services

EXPLANATORY MEMORANDUM

These Regulations are made in exercise of the powers in section 11 of the European Union (Withdrawal) Act 2019, in order to address failures of retained EU law to operate effectively and other deficiencies arising from Gibraltar's withdrawal from the European Union. They amend the Financial Services (Insurance Companies) Regulations 2020.