

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4815 GIBRALTAR Thursday 28th January 2021

LEGAL NOTICE NO. 87 OF 2021.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL COLLATERAL ARRANGEMENTS ACT 2004 (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 Collateral Arrangements Act 2004 (Amendment) (EU Exit) Regulations 2021.

Commencement.

2. These Regulations are deemed to have come into operation on 1st January 2021.

Amendment of the Financial Collateral Arrangements Act 2004.

3.(1) The Financial Collateral Arrangements Act 2004 is amended as follows.

(2) In section 2—

- (a) in the definition of “central counterparty” for “Financial Markets and Insolvency (Settlement Finality) Regulations 2011” substitute “Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020”;
- (b) in the definition of “clearing house” for “Financial Markets and Insolvency (Settlement Finality) Regulations 2011” substitute “Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020”;
- (c) omit the definition of “competent authority”;
- (d) omit the definitions of “EEA” and “EEA State”;
- (e) omit the definition of “Financial Collateral Directive”;
- (f) after the definition of “the Minister” insert—

““Part 7 permission” means permission under Part 7 of the Financial Services Act 2019;” and

- (g) in the definition of “settlement agent” for “Financial Markets and Insolvency (Settlement Finality) Regulations 2011” substitute “Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020”.

(3) In section 3–

- (a) omit subsection (1);
- (b) in subsection (2)–
 - (i) for “these Regulations” substitute “this Act”; and
 - (ii) omit “Directive 2008/48/EC of the European Parliament and the Council of 23 April 2008 on credit agreements for consumers and”;

(c) for subsection (8) substitute–

“(8) Sections 6 to 8 of this Act shall not apply to–

- (a) any restriction on the enforcement of financial collateral arrangements or any restriction on the effect of a security financial collateral arrangement, any close out netting or set-off provision that is imposed by virtue of regulations 59 to 72 of the Financial Services (Recovery and Resolution) Regulations 2020; or
- (b) any such restriction that is imposed by virtue of similar powers in Gibraltar law to facilitate the orderly resolution of any entity referred to in section 4(1)(f) and 4(1)(i) which is subject to safeguards at least equivalent to those set out in regulations 73 to 80 of the Financial Services (Recovery and Resolution) Regulations 2020.”; and

(d) for subsection (9) substitute–

“(9) The provisions of this Act are without prejudice to the Financial Services (Recovery and Resolution) Regulations 2020.”.

(4) In section 4–

- (a) in subsection (1)–
 - (i) for paragraph (a) substitute–

“(a) a public authority, including–

 - (i) public sector bodies within Gibraltar charged with or intervening in the management of public debt; and

- (ii) public sector bodies within Gibraltar authorised to hold accounts for customers;”;
- (ii) for paragraph (b) substitute–
 - “(b) any of the following–
 - (i) a national central bank (if such a bank is established in Gibraltar) or other monetary authority (if any) in Gibraltar;
 - (ii) the Bank of England;
 - (iii) any central bank (or other monetary authority) of a country or territory outside Gibraltar that is–
 - (aa) a central bank (or other monetary authority) of an EEA state (including the European Central Bank); or
 - (bb) a member of the Bank for International Settlements (including the Bank for International Settlements),
 - as may be designated by the Minister by notice in the Gazette; or
 - (iv) a multilateral development bank as referred to in Article 117 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as it forms part of the law of Gibraltar after IP completion day;”;
- (iii) for paragraph (c) substitute–
 - “(c) a credit institution which has Part 7 permission to carry on the regulated activity of accepting deposits in paragraph 3 of Schedule 2 to the Financial Services Act 2019 or post office giro institutions;”;
- (iv) for paragraph (d) substitute–
 - “(d) an investment firm with Part 7 permission to carry on any investment services and activities specified by paragraphs 48 to 56 of Schedule 2 to the Financial Services Act 2019;”;
- (v) for paragraph (e) substitute–
 - “(e) a financial institution within the meaning of section 2(2) of the Financial Services Act 2019;”;

(vi) for paragraph (f) substitute—

“(f) an insurance undertaking with Part 7 permission to carry on the regulated activity in paragraph 24 of Schedule 2 to the Financial Services Act 2019 of effecting and carrying out contracts of insurance;”;

(vii) for paragraph (g) substitute—

“(g) an undertaking for investment in transferable securities (or UCITS Scheme) as defined in section 292(1) of the Financial Services Act 2019;”;

(viii) for paragraph (h) substitute—

“(h) a person with Part 7 permission to carry on the regulated activity in paragraph 93 of Schedule 2 to the Financial Services Act 2019 of managing a UCITS;”;

(ix) in paragraph (j) for “(k)” substitute “(i)”; and

(b) for subsection (3) substitute—

“(3) For the purposes of sub-section (1)(i), the reference to central counterparty, settlement agent or clearing house shall include similar institutions regulated under the law of Gibraltar acting in the futures, options and derivatives markets to the extent not covered by the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020.”.

(5) In section 5(3)(b) for “arising from the provisions of the Financial Services (Banking) Act” substitute “under the laws of Gibraltar”.

(6) In section 9 for “these Regulations” substitute “this Act”.

Dated: 28th January 2021.

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. The regulations amend the Financial Collateral Arrangements Act 2004.